No. 92-5584-CFX
Status: DECIDED

Title: James L. Martin, Petitioner
v.
District of Columbia Courtr of Appeals, et al.

Docketed:
August 19, 1992

Court: United States Court of Appeals for the District of Columbia Circuit

See also:
92-5618

Counsel for petitioner: Martin,James L.

Counsel for respondent: Wilson,Mary, Brown,Orran Lee, Reischel,Charles L.

Entry	Date	Note	Proceedings and Orders
1	Aug 19 1992	D	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
3	Sep 18 1992		Brief of respondent National Conference of Bar Examiners in opposition filed.
4	Sep 24 1992		DISTRIBUTED. October 9, 1992
5	Oct 13 1992		REDISTRIBUTED. October 16, 1992
7	Oct 26 1992		REDISTRIBUTED. October 30, 1992
9	Nov 2 1992		The motion of petitioner for leave to proceed in forma pauperis is denied. Dissenting opinion by Justice Stevens with whom Justice Blackmun joins. Opinion per curiam.

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PUBLISHER'S NOTE:

ORIGINAL PAGINATION IS NOT CONTINUOUS.

92-5584

ORIGINAL

SUPREME COURT OF THE UNITED STATES

James L. Martin, petitioner : No. _____

v. :

District of Columbia Court of Appeals, et. al., respondents :

MOTION FOR LEAVE TO PROCEED *in forma pauperis*

I, James L. Martin, move for leave to proceed in this matter *in forma pauperis*, without prepayment of costs and fees. On 9-29-89, the district court judge granted me leave to proceed *in forma pauperis* on appeal. My Verified Statement in support of this Motion is attached as Ex-1a, and the issues presented are incorporated herein from the Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit, which accompanies this Motion.

WHEREFORE, I request that this IFP Motion be granted.

DATED: August 15, 1992 BY: James L. Martin

James L. Martin, 912 McCabe Ave., Wilmington, DE 19802 (302) 652-3957

AFFIDAVIT

I, James L. Martin, first duly sworn according to law, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to pre-pay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of proceeding in this Court are true.

1. Are you presently employed? Yes.
   a. If the answer is yes, state the amount of your salary or wages permonth and give the name and address of your employer. $280/mo., ave. net. ($1,840/mo., ave. gross). Self-employed.
   b. If the answer is no, state the date of your last employment and the amoutn of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source? Yes.
   a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months. $3357 net from self-employment. ($22,070 gross).*

3. Do you own any cash or checking or savings account? Yes.
   a. If the answer is yes, state the total value of tne items owned. $198

4. Do you own any real estate, stocks, bonds, notes , automobiles or other valuable property (excluding ordinary household furnishings and clothing)? Yes.
   a. If the answer is yes, describe the property and state its approximate value. '78 Toyota pick-up truck. Salvage value.

5. List the persons who are dependent upon you for support and state your relationship to those persons. None.

*Excludes income contingent upon resolution of various legal cases. Net shows losses occasioned from the continuing interference with my law licenses.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury, in accord with 28 USC § 1746 this 15th day of August 1992.

/-/ James L. Martin

Subscribed and Sworn to Before me this 15th day of August, 1992.

NOTARY PUBLIC

Ex-1a

SUPREME COURT OF THE UNITED STATES

James L. Martin, petitioner : No. _____

v. :

District of Columbia Court of Appeals, et. al., respondents :

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of **MOTION FOR LEAVE TO PROCEED *in forma pauperis*** upon opposing counsel of record for the DC respondents, addressed as follows:

Mary Wilson, Asst. Corporation Counsel
District Bldg., Rm 305
1350 Pennsylvania Ave, N.W.
Wash., DC 20004

and upon counsel of record for the remaining respondent, National Conference of Bar Examiners, at this address:

Orran Lee Brown, Esq.
CHRISTIAN, BARTON, EPPS, BRENT & CHAPPELL
1200 Mutual Bldg.
909 E. Main St.
Richmond, VA 23219-3095

by first-class, postage-prepaid mail this 18th day of August 1992.

By: James L. Martin

James L. Martin, 912 McCabe Ave., Wilm., DE 19802 (302) 652-3957

SUPREME COURT OF THE UNITED STATES

James L. Martin, petitioner : No. _____

v. :

District of Columbia Court of Appeals, :
Hon. John A. Terry, Hon. James A. Belson, :
Hon. Judith W. Rogers, District of Columbia :
Court of Appeals' Admissions Committee, :
Hon. Catherine Kelly, James F. Walker, :
John Risher, Carol G. Freeman, Robert Elliott, :
Patricia Wynn, and National Conference of :
Bar Examiners, respondents :

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

August 15, 1992

By: James L. Martin, 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957

Questions Presented

A. Does the Americans with Disabilities Act (ADA), signed on 7-26-90 and effective* retrospectively as to pending cases, enjoin a state attorney-licensing authority from discriminating against an applicant for bar admission on the basis of physical or mental handicap, if an applicant is otherwise qualified to work, if the applicant passed the bar exam, and if the applicant has been doing legal work for various clients for several years?

B. May a federal district court exercise subject-matter jurisdiction over the state bar admission process, where, from 1982 until 1991, the state court of last resort refused to certify any issues that warranted withholding or denial of bar admission after an applicant passed the bar exam and where, several years after the application was filed, the state court denied bar admission on account of false accusations rooted in the applicant's remote medical record?

C. Should the doctrines of comity or abstention protect state courts of last resort from discriminating against applicants for federal constitutional and statutory torts?

D. Do state court justices have any immunity for demands for declaratory or injunctive relief?

*Effective date for last part of ADA: July 26, 1992.

Contents

Authorities

Federal Statutes

Federal Cases

Other Authority

OPINIONS AND ORDERS IN THE COURTS BELOW

In an Order dated 5-8-92, the DC Circuit issued as Order to summarily affirm the district court. See 1a. The Order also denied my Motion for Summary Reversal. My Petition for Rehearing and for Rehearing *en banc* was denied on 7-24-92, at 2a to 3a, the last business day before the retroactive, effective date for the Americans with Disabilities Act.

The authorization to sue the respondents, issued from the OCR for private restitution, is at 6a of the related Petition pending here since 7-1-92 at No. 92-5068. The 10-4-91 Order from the district court is at 4a to 5a.

STATEMENT OF THIS COURT'S JURISDICTION

This Court's jurisdiction for review is at 28 USC Sec. 1254(1).

AUTHORITIES RELIED UPON

1st Amendment: "Congress shall make no law . . . abridging the freedom of [commercial] speech, . . . or the right of the people peaceably to assemble [or to associate with one another] . . .."

14th Amendment, Sec. 1: ". . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law; . . .."

14th Amendment, Sec. 1: ". . . [N]or shall any State deprive any person of life, liberty, or property, . . . nor deny to any person within its jurisdiction the equal protection of the laws."

P.L. 100-259, Sec. 4(b)(1)(a) (Civil Rights Restoration Act of 1987): In the Rehabilitation Act Amendment, enacted on 3-22-88, "the term 'program or activity' means all the operations of--

"(1)(A) a department, agency . . . of a State . . .."" P.L. 100-259, Sec. 4(b)(1)(A).

29 USC Sec. 706(6) [Rehabilitation Act of 1973, Sec. 504]; 45 CFR Sec. 1361.1(k)(2)(ii)-(iii): "Handicapped individual," under the Rehabilitation Act of 1973, includes not one who concedes a handicap others diagnose or observe, but it also covers one

"(ii) Who has a record of such impairment; or

"(iii) Who is regarded as having such an impairment."

42 USC Sec. 1981A (Sec. 102(a)(2) of the Civil Rights Act of 1991):

"DISABILITY.--In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 USC 12117(a)), and section 505(a)(1) of the Rehabilitation Act of 1973 (29 USC 794a(a)(1)), respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 501 of the Rehabilitation Act of 1973 (29 USC 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 USC 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent."

42 USC Sec. 1981A (Sec. 102(b)(1) of the Civil Rights Act of 1991):

"COMPENSATORY AND PUNITIVE DAMAGES--

"DETERMINATION OF PUNITIVE DAMAGES. A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual."

42 USC Sec. 1983: "Every person who, under color of any state statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other property proceeding for redress . . ."

42 USC Sec. 12101 *et. seq.*, "Americans with Disabilities Act of 1990." The relevant text of the "Congressional findings," at Sec. 12101(a), are set forth here:

"(a) Findings. The Congress finds that--

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and . . . such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, . . . education, . . . and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, . . . overprotective rules and policies, . . . exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity."

Congress continued, in subsec. b, to set forth the purpose of the Act in these terms:

"(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities."

Sec. 12102 defines "disability" in terms like those in the Rehabilitation Act of 1973, Sec. 504:

"(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment."

STATEMENT OF CASE

A. Basis for federal jurisdiction in the court below: Original jurisdiction in the district court was based on 28 USC Sec. 1331(a) for federal questions, because the amount in controversy exceeds $50,000, exclusive of interests and costs, and the action arose under the US Constitution and laws, including the 1st and 14th Amendments, 28 USC Sec. 794 [the Rehabilitation Act], the *Bivens* doctrine, and various state constitutional and common law provisions. Jurisdiction was also conferred by 28 USC Sec. 1343 to recover for deprivations of civil rights, by 28 USC Sec. 2201 and 2202 for equitable remedies.

B. Nature of Case. The complaint sought declaratory relief and money damages, and an injunction against further discrimination from the respondents' imputation of a character flaw rooted in their misunderstanding about my remote medical history, now over seventeen years old. They sought to capitalize upon the Delaware Law School's 1979

application form, which contained a patently unlawful inquiry about medical history, and my answer to it. I filed the application before 1980, my first year in law school.

In 1982, after it became clear that I would soon graduate from the appellee School, which had a branch operating in the Arlington area (Rosslyn) at 1611 N. Kent St.; Arlington, VA 22209, the School's officials called me back to DE from my home in VA, at 3059 N. Military Rd., Arlington, where I had been living. The School violated its own, internal policy as well as the federal law, like the Rehabilitation Act of 1973, Sec. 504, because it determined in 1982 that I had improperly answered their unlawful question about my own medical past when I applied for school admission in 1979, as if the School's employees knew more about my own medical history than I do, and as if my own medical history is their legitimate business in the first place. Therefore, they alleged to the Boards of Law Examiners in six (6) states, including the respondent Committee, that I was not fit for the practice of law, and falsely represented that I was the subject of a grievance filed against me during my academic career at the School. I have never been the subject of a grievance filed against me anywhere in my entire life.

Respondents associated with the School in related cases compounded their scheme with a highly defamatory article in a School publication that was published in May 1990, where they claim, among other malicious allegations, that I was an aspiring high school drop out. I graduated from high school with highest honors and had a near perfect attendance record. I retained some of the letters from my teachers in those days, which indicate that I was one of the finest students they ever had.

The NJ federal respondents in the case filed here at No. 92-5068, including various members of the Board of Law Examiners in DE where I had

also applied, and of the DE and NJ Supreme Courts, purported to disbar me under the guise of their own, unilateral "mistake." In fact, the undisputed evidence shows *ex parte* communications from persons outside NJ, like respondents Kraus and Vinton at No. 92-5068, who had no grievance against me but did have legal rights at stake should I continue practicing law, to various bar officials, who acted at their unilateral behest and attempted to induce me to believe a clerical error occurred.

Because of the attack on my state bar admission, I took extraordinary measures to ensure against a similar attack on my federal NJ bar admission. After written correspondence and tape-recorded phone conversations with the NJ Federal Admissions Clerk, I was granted two Certificates of Good Standing, evidencing my admission there since 1984.

This action is related to one filed in Jan. '85 at No. 85-53, Martin v. Delaware Law School, et. al., 625 F. Supp. 1288, 884 F. 2d 1384, cert. den., 110 S. Ct. 411 (1989), reh. den., 1-8-90, one arising in DC, Martin v. Delaware Law School, et. al., cert. den., 110 S. Ct. 212 (1989), reh. den., 110 S. Ct. 421 (1989), among others. When the initial case was before the trial court in DE, an Opinion was issued which reads in relevant part: "Plaintiff has not alleged that he has exhausted available administrative remedies under the Rehabilitation Act." Martin v. DLS, et. al., 625 F. Supp. 1288, 1298 (D. Del. 1985). When I referred to the administrative decision in my favor, which the appellee School did not appeal, Judge Farnan contradicted himself and completely reversed his position about the effect of "administrative remedies," without reference to or reliance upon any intervening authorities or factual disclosures to support his revised view, that the administrative process is a sham:

THE COURT: "You can just ignore them [administrative hearings and decisions]." TRN of 5-2-88 hearing before Judge Farnan, p. 26, line 7. At the same 5-2-88 hearing, Judge Farnan referred to his "brief exposure to this case [85-53]," although at that time, he had been assigned to it for more than three (3) years. See TRN., p. 37. (The ABA nationwide survey shows the average time from filing until disposition to be about fourteen (14) months; the Third Circuit Journal's reports show that the average time in DE is less than the national average. This means that, at the time of Judge Farnan's remark, he had already been impounding the case for about three times longer than the average; after that foolhardy remark, he impounded this matter for an even more protracted period than before the comment.)

Judge Farnan's refusal to rule upon the remaining claims referred to in the 3rd Cir. 4-22-87 Order at Appeal No. 86-5846 [No. 85-53 (JJF) in the DE Federal District Court], with his refusal to certify the resulting issue about the identity of those unresolved claims specified by the 3rd Circuit, comprised not merely a clearly erroneous ruling, but cast in sharper focus his inability to bring disinterestedness to a matter involving the Delaware Law School as well as the parties associated with it:

THE COURT: "I am wondering if [PA] Judge Huyett said it wasn't his case and he got appealed and affirmed, that sort of only leaves my case--" TRN., p. 15; lines 15 -17, of 5-2-88 hearing. Simple logic is meaningless among those who are committed to protecting friends and associates in their obviously unlawful scheme. Judge Farnan was removed through a Motion to Recuse in the related matter, on 6-15-90, now pending here at No. 92-5068. NJ Judge Fisher granted my Motion to Recuse and to Disqualify him on account of an obvious, conclusive prejudice in favor of the adverse parties in NJ, although the Third Circuit had, just ten (10) days before, issued an

Opinion denominating my Motion to Recuse directed against Judge Fisher "frivolous and abusive," and the Opinion also contained various threats rendered utterly foolish in view of the interim developments. Efforts continue to invalidate PA Judge Huyett's avid protection of continuing corruption by compelling his involuntary removal as well, after all his Orders are rendered void *ab initio* for direct and prolonged affiliation with adverse parties. Judge Huyett continues to claim "the judicial disqualification statute is designed to foster the appearance of impartiality"--mere window-dressing (10a in the related case pending here at No. 91-8411), and therefore refuses to leave.

Judge Huyett relied upon Judge Fisher's Opinions for some of the claims in a related NJ case, but Judge Fisher was recused after the issuance of Judge Huyett's Orders. See 7a at No. 92-5068, filed here on 7-1-92.

C. Statement of Facts: A remote, adverse medical record, now over seventeen (17) years old, is attributed to me, so I am deemed a "handicapped individual" under the Rehabilitation Act and under the recently effective Americans with Disabilities Act, designed to protect not only those who concede a disability, but also those who have been mistakenly diagnosed.

In the early 1970's, when I was a student in college, I got a notice to report for a pre-induction physical exam from the Selective Service System. The Mennonite Church I was a member of promulgated a doctrine called "nonresistence," which is stated in these terms: "The doctrine of nonresistence makes it inconsistent for Christians to become involved in areas such as political offices, military service, lawsuits, and jury duty." (From Art. IV, "Rules and Discipline of the Lancaster Conference of the Mennonite Church," adopted by the Mennonite Church's Lancaster

Conference on 7-17-68.) Art. IV, Sec. 3 further provides, "Members who go into military training or service forfeit their membership." Because I reported to the Selective Service System's pre-induction Center and did not elect alternative peacetime service, but remained in college instead, the church authorities criticized my decision, and I was labelled a "backslider."

Less than three (3) years later, although I had been rejected for induction into the military service and classified as "4-F" because of high blood pressure and an adverse medical history from a mild heart condition for which I was hospitalized in Oct. 1964, the Lancaster Mennonite Conference's mental institution, in collaberation with another asylum nearby, wrote these "reasons" for my warehousing under the benevolent guise of emergency medical attention: "James has threatened his life and is not responsible for his actions. It is felt James is a danger to himself at this point." The "reasons" were supplemented at an unspecified later date to read, "Seems to have lost contact with reality and is highly agitated and aggressive."

Although that kind of general accusation could be directed at almost anyone depending upon one's perspective, the occurrences leading to my detention became most apparent in 1975, when I had registered for my final semester at Lebanon Valley College, where I was then a senior. I had already finished all the scholastic requirements incident to graduating with a baccalaureate degree, and although the faculty advisor I studied under had already approved my final schedule of courses in writing, the college's registrar decided to disallow just one credit, so that I would have to elect a full course load, reschedule other courses to interfere with my job, and pay about $575 more for tuition than I owed. After trying to satisfy the conflicting demands of the registrar and the plan from my faculty advisor,

who was also my professor for an honorary course, and after finding increasing frustration rather than an opportunity to prepare for my career, I withdrew from the college. Some of the courses on my transcript had been mislabelled, for they were recorded as "economics" rather than as "business administration." Although the distinction may be immaterial for many purposes, it was quite vital for me at that time. The PA licensing authority for CPA's required at least 24 credits in accounting or business administration to qualify for the exam leading to licensure. Although I had enough credits, they were not properly labelled. For about 3 1/2 years after I had finished my studies, the college's administration simply persisted with its refusal to correct my transcript. My decision to quit was the basis for deeming me "mentally disabled."

However, no one ever applied for my detention. The affidavits from my parents clarify this point. Some of my siblings with personal knowledge about what occurred also furnished affidavits.

Predictably, the administration at Lebanon Valley College got broken up several years after I was there, for some faculty members as well as students were mistreated. The chairman of the Dept. I majored in wrote a "newsletter" to 193 prospective students who showed interest in enrolling at the college, and his newsletter clearly informed them that they should not attend that college if they really wanted an education in economics and business administration. The college's president tried to carry on a written debate with the departing departmental chairman by sending out "A Response." It was mailed to about 800 alumni as well as the 193 prospective students. The president and his subordinates got fired or found themselves retired early.

The psychiatrist assigned to me at the asylum was an honored alumnus of the same college. He said, "Right at this time, you must demonstrate that you can achieve a worthwhile purpose in life and discipline your life; and completing those courses and getting your degree I believe to be a worthwhile purpose." (From a tape-recorded conversation between the psychiatrist and me at the asylum on Wed., 6-4-75.) The fact that I had long before satisfied all the scholastic requirements for a degree was entered in the "medical records" like this: "speech irrelevant." The faculty at college nominated me for membership in their honorary societies. While the college's administrators and church officials portrayed me as a hopelessly psychotic and dangerous lunatic, my professors at school indicated, in their own, modestly quiet way, that they found me "to possess high requisites of character and scholarship."

The following year, in 1976, I wrote to the psychiatrist who claimed insurance money for "treating" me. First, the psychiatrist, through his secretary, wrote: "I do not know why your records would show that these payments were made to Dr. Altaker." (From his letter to me dated 3-9-76.) When I responded with copies of the insurance statements, Dr. Altaker's response was materially changed: "I have again checked our records and find that although a check was issued to Dr. Altaker as per the payment notice to you, it was in error and this check was endorsed over to Dr. Garber who had treated you." (From his letter to me dated 3-22-76.)

Dr. Garber was not even at the asylum when I was rushed there under the guise of an emergency medical problem. Dr. Altaker never talked to me, never came into my room to see me, and never represented himself to me as a doctor or a psychiatrist. I never talked to him, never went into his office, and never represented myself to him as his patient.

The asylum's Answers to my RFA's in Martin v. DLS, et. al., 85-53 (JJF), D. DE, admits what I alleged to have occurred under the guise of treatment:

"It is admitted that the 2/20/75 progress note written by Dr. Garber reads as follows: 'He is properly afraid of his roommate who is paranoid, threatening, and hostile.' It is also admitted that the 2/21/75 progress note written by Dr. Garber reads as follows: 'Fears concerning his roommate are justified and the roommate required seclusion yesterday'."

See Sworn Answer from 3-29-85 Affidavit of Tybout. The same Answer also shows what I have been advancing all along: there never was a legitimate basis for taking me into custody in the first place. When I requested an admission from the asylum on this point, here is the response I got: "This defendant does not know what the plaintiff did or did not do on February 2 [1975--the day I was detained]."

I am "otherwise qualified" to practice law, evident from my admission to bar of the US Tax Court, of the NJ Supreme Court, and of the NJ Federal District Court since 1984 (although my admissions to the NJ Courts were labelled "mistakes" at the behest of racketeer-defendants incident to a case where I represent a group of plaintiff-investors--that matter is now before this Court at No. 92-5068), my admission before the IRS since 1978, as well as my work in the US DOJ in 1982, in the DE AG's Office in 1981, and in private law and accounting firms for several years since 1978.

I have been, and continue to be, wrongfully excluded from the DC Bar solely because of accusations relating to my remote medical past and to my answer to the unlawful question about medical past on the application for law school admission I filled out in 1979.

In a letter dated 11-15-82 from Delaware Law School's John Kurtz to me in Virginia where I lived at that time while working for the DOJ in DC,

Kurtz informed me that I was to appear on 11-22-82 at the School in DE for an "interview." I received this letter on 11-18-82, which gave me exactly one business day, Friday, 11-19-82, to prepare for an "interview" even though no issue or topic had been noted. The time restriction alone guaranteed a mockery of fairness.

In a letter to me dated 2-2-83, the School's Faculty Secretary Edward Smith misinformed me, "The Committee had found that you had been 'committed to a mental institution' and 'undergone mental treatment'."

On an internal memo from Asst. Dean Munneke to Dean Santoro, at DLS, John Kurtz circled "committed" and wrote: "Not 'committed'--had been a 'patient in' and had been 'confined'." Later the same month, Asst. Dean Munneke wrote to me, in response to my written reminder that the Grievance Committee had no jurisdiction over questions pertaining to a student's remote medical history raised for the first time less than a month before that student was scheduled to graduate, "No grievance or Honor Code violation was brought against you . . .."

In another internal memo I accessed for the first time under the FOIA in 1988, Assoc. Dean Thomas Reed noted "an affidavit executed by Mr. Martin's mother stating she signed a further commitment application for her son on April 2, 1975 under false pretenses." Reed's willingness to dishonor the School's own written Code, which allowed for an appeal to and disposition by the Dean's Office, is suggested with his concluding statements.

"I discussed the matter briefly with Dean Santoro who advised me to take no action on this matter, and to decline to answer Mr. Martin's phone calls. On September 26, 1984, Mr. Martin called Professor Smith, who then attempted to have the call switched to my office. I instructed Professor Smith to tell Mr. Martin that I was not available."

Assoc. Dean Reed's dishonesty becomes much more conclusive in his 10-5-84 letter to me where he begins with a vain, stupid lie:

"I was unable to return your calls or reply to your September 21 request for a revision of your academic files, as I was out of town recruiting for next year's class at several schools."

He did not acknowledge that my call to him had been switched from him, and the only reason he chose not to talk to me was because Dean Santoro directed him "to decline to answer Mr. Martin's phone calls."

When Dr. Hostetter, my cousin and a psychiatrist as well, who has some knowledge about what occurred in 1975, wrote to Dean Santoro to request a revision in my school file about the erroneous information pertaining to my remote medical past, Santoro replied to me, "The committee did not intend to convey the impression that you had been committed involuntarily. Indeed, the manner by which you came to be hospitalized is not relevant. ***It is the fact of hospitalization which is relevant*** [Emphasis added]"

According to the interview notes from the OCR investigation, Santoro claimed that the reason the School found it necessary to ask about an applicant's remote medical history was because of their relationship with the state governments:

"We have a responsibility to respond accurately to the inquiries from state bars. We are in line with what the states require." Santoro proceeds to lie, "It was an honor code violation." (The Honor Code only pertained to academic dishonesty.) Santoro speculates, "My guess is that Martin lied on his Pennsylvania [bar application.]" (The PA Bar Application form has no question about remote medical history.)

The interview notes about Edward Smith disclose that Smith admitted, "Martin volunteered the information concerning his confinement to Professor Clark." Smith does not specify that this voluntary disclosure

occurred during my first year, and Smith fails to acknowledge that he was my faculty advisor for an independent study course, "Law 799," for which credit was entered on my transcript for writing about my 1975 detention. Smith contended, for the first time in 1988, that he never actually read the project.

Committee Chairman John Kurtz admitted,

"That case did not have a formal grievance. The Grievance Committee did not sit as a formal grievance [sic]. We interviewed Martin. We had made a phone call to a Judge in upstate Pennsylvania and found out about Martin's commitment. . . . We [members of the Grievance Committee] left it to the faculty to determine'."

Faculty Secretary Edward Smith claimed, "We [faculty] referred the concerns to the Grievance Committee for investigation." Kurtz eventually admitted that the Grievance Committee had no jurisdiction over matters pertaining to admission: "Generally, matters of admission are not considered by us. We have those matters between a school and students, cheating, grading, charges of bias, student suspensions from class."

Professor John Landis, with Pam McFarland, were responsible for bringing the casual, informal "charge" before the faculty. The OCR interview notes say, "Martin claimed that the police were following him. This all seemed a bit extreme (strange, paranoid) to us." [An affidavit from one of the police officers following me at that time appears at Ex-38 to 40 in this case, Martin v. DC Court of Appeals, et. al., 89-2789 (TPJ), while it was pending before the DC Federal District Court, filed there on 10-11-89. The complaint was at Ex-7a to 25a, attached to my Petition for a Writ of Certiorari filed here on 8-16-91 at No. 91-5476, Martin v. Bar of the DC Court of Appeals. Documentary exhibits to verify the complaint in the matter at bar are at Ex-26a to 51a, attached to the 91-5476 Cert. Petition. There was

no basis for the prolonged police harassment of me for nearly 3 years throughout most of the time I was in law school.]

The preceding statement has been verified by Gwendolyn Mosley, Senior Deputy AG, in the answers to discovery requests filed on behalf of the PA state police officers on 7-23-92, in Martin v. Wilson, et. al., No. 88-2300, ED PA, before Judge Huyett; my litigation against the PA State Police has been ongoing since the spring of 1981, over 11 years. Here is part of RFA 4: "The following is a transcript of a phone conversation initiated on 9-11-90 by Theresa O'Neill, with the defendant PA Dept. of Trans., and me: ("O" means O'Neill, "M" means Martin)

M: Years ago, in 1981, Mr. Spena issued a notice revoking my drivers' license, and this has been a source of controversy in various states, including New Jersey, incident to my application for licensure there.

O: Yes.

M: And what they want to hear is some testimony about why it was taken, since they did not give me the benefit of knowing that, and I think I indicated in the letter that, if they have any further questions about it, there's a number to call over in New Jersey.

O: O.K., well sir, this is the Bureau of Driver Licensing, and any action that was taken at any time against your driver's privileges in the state of Pennsylvania could be answered by this area, if not by myself, by someone else. The first problem is that the Bureau will not be sending anyone to appear in any kind of a hearing or testify, or so on. Do you want to have me take a look at your driver record? Do you still have a driver number from Pennsylvania?

M: Yes.

O: Do you have that number?

M: Let's see, I could get it here for you. It is 15132779.

O: O.K., hold on please.

M: All right.

O: And, sir, you're aware that your privilege in Pennsylvania is still, even though this was a situation in 1981, 82, and 83, is still under suspension? You have not met your restoration requirements in Pennsylvania. You're aware of that?

M: No, no one has ever said anything about that.

O: O.K., bear with me as I look at your record for just a moment. O.K., at this point in time, sir, all we need from you to clear your situation in the state of Pennsylvania is a $25.00 restoration fee. And that will clear your situation in Pennsylvania. So I can give you information on how to send that fee into us if you want to take care of that situation.

M: Well, I don't understand, I mean, I've had my license ever since 1969, and I've paid the fees as they come due, so that I really don't understand why there would be a restoration fee if I never did anything wrong.

O: O.K. sir, when you were placed under suspension in 1981, at that time, you were notified that you needed a restoration requirement, or a restoration fee, in order to be restored. And according to the system, we do not have that yet. Do you know whether you paid that $25.00 restoration fee that is required by law?

M: So far as I know, there never was any fee like that issued against me.

O: O.K., well, it is a requirement by law, and you would have been notified in writing that you would need that restoration fee. That's the only thing holding you up at this point, and I can give you that address, if you'd like to take care of that.

M: Well, I guess the Committee is still trying to find out why the revocation order was entered in the first place.

O: O.K., hold on just a moment. And by the Committee, you're talking about the courts of New Jersey?

M: Yes.

O: O.K. The Court of New Jersey can request, upon their request, the Court of New Jersey can receive information from us. Now, we can provide you information, however--the same information--if you request it, you must pay that fee in order to obtain that information. So I can direct you either way. I can either have you notify New Jersey that they may request the information from the state of Pennsylvania, or we can explain to you how to obtain that information yourself.

M: Well, if it's going to be expensive to get it, and if they could take it without reason as to me, there would be no incentive, from my end of it, to pay for some reason.

O: O.K., well that's entirely between you and the State of New Jersey. You know, the only thing I can suggest is this: if you want to take this up with New Jersey, I can certainly give you the information now on how to pay that $25.00 restoration fee. If any more information is required, either the State of New Jersey can obtain the information from Pennsylvania that it is actually from the State, or you can request the information yourself, and I can give a telephone number if there are any concerns about how to obtain information.

M: All right.

O: O.K. Our general telephone information number is 717-787-3130.

M: All right. And how would the State of New Jersey go about getting the information?

O: O.K., they have a regular procedure of obtaining the information from the State of Pennsylvania. They can request that, in writing, to the State of Pennsylvania.

M: O.K.

O: As long as it's a state government agency. This Character Committee--this is from--?

M: From the court system in New Jersey.

O: Right. O.K., the court system in New Jersey should be very well aware that all they have to do is request it in writing, as long as it's from the court system in New Jersey. O.K.?

M: All right, and what's your name again?

O: My name is Theresa O'Neill.

M: All right.

O: And as I said, any concerns you have can be addressed through that 3130 number.

M: O.K.

O: O.K.?

M: All right, thank you.

O: Sure. Bye now.
M: Bye."

Here is the "answer" from the PA State Police, interposed despite the tape recording I submitted with the RFA's: "Answering defendants are not able to admit or deny the truthfulness of the answers [sic] in this paragraph because they do not know whether they represent an accurate transcription of the conversation between plaintiff and Ms. O'Neill."

In RFA 5, where I wrote, "The documents at Ex-1 to 3 verify what I told Ms. O'Neill during our phone conversation," the defendants simply

repeated their non-answer to the preceding question. (The exhibits are part of the Motion for Sanctions I filed in that case 6-22-92.)

In RFA 6, I requested an admission for this: "Ex-1, an Official Notice dated 11-16-83, directly contradicts what she [PennDOT's Theresa O'Neill] told me about any restoration fee." The defendants mechanically repeated that they could not answer the question.

However, defendants admitted the following: "In 4-81, when my driver's license was due for renewal, I got an inquiry about my medical condition from you, and I indicated that I was once improperly diagnosed to be medically disabled, but that the condition was alleged to be 'in remission'."

They also admitted, "You requested that I go to my doctor to have a General Medical Form completed."

I asked them to admit this: "In a letter dated 4-20-81, I informed you that I did not have a doctor, that my answer to your questionnaire was 'yes' because I had been diagnosed to have 'schizophrenia--paranoid type,' and when I was released, this condition was diagnosed to be 'in remission;' that other doctors who had diagnosed me reported that the condition, if any, was not evident; and that I had not been able to afford the price for expungement of my medical records." Their Answer says, "Admitted that plaintiff sent a letter dated May 20, 1981 which purports to explain his response given on the General Medical Form. The May 20, 1981 letter speaks for itself."

In my next question, 13, I sought this admission: "You recalled my driving privileges with knowledge that I had no adverse driving history, that the medical condition that I was alleged to have had was th result of a bogus diagnosis, and that I could not have had my license restored even if I had

consulted a doctor who certified that I was not medically disabled." The defendants, although they conceded receipt of my 5-20-81 letter, "admitted that plaintiff's driving privileges were recalled even though there was no known adverse driving history."

In RFA 14, I sought to show that the defendants were primarily, if not exclusively, interested in harassing me: "The General Medical Forms you sent to me are not used to evaluate those drivers whose disability is the result of a neuropsychiatric impairment; you have a different form for those alleged to be suffering from a neuropsychiatric condition, but you did not provide me with that form." They admitted "that the Department of Transportation uses different forms to be completed by the physicians of those suffering from a neuropsychiatric condition." They attempted to undermine the question by inserted new matter in the Answer: "The General Medical form served to provide an overall evaluation and is a starting point. Thereafter, more specific medical forms may be used."

When I asked them to admit the obvious--I carry the presumption of being a safe and able driver until you present evidence to call me competency into question, and you never did have any such evidence--they lodged a foolish, but consistent, answer: "Denied."

The defendants admitted they "did not respond to the Petition for Review that I filed in the Lancaster County Court of Common Pleas on 6-12-81 at Trust Book 47, p. 30," and admitted "After I filed the Notice of Appeal on 6-11-81, you continued to pursue this matter as though it were not pending in any court." As a corollary to these two admissions, I wanted them to concede their continuing attempts to apprehend me, despite the effect of the lodged appeal: "You refused to honor the supersedeas and the stay filed in Lancaster, PA." However, they denied this statement. This is

unfortunate, for if they had honored the effect of the appeal, which served as a supersedeas and as a stay, it is highly unlikely that they could have involved themselves as extensively as they did in ruining my life and career.

Nicksic, one of the state police officers, also admitted: "On 9-24-81, you sent Trooper Nicksic to my home in Quarryville, PA; he left a written notice directing me to find someone who would drive me to the police station. On Friday evening, 3-26-82, you sent a police officer to my home area who parked his car next to my neighbor's house to await my return and, when I did not arrive, your officer just continued to wait there until nearly mid-night." The defendants in the police harassment case also admitted, without qualification, RFA's 24 and 26: "**At no time did you grant me the opportunity for a hearing before revoking my license,**" and "**When I was institutionalized in 1975, you did not suspend or revoke my license.**" Just as significantly, the defendants admitted: "**I have had a good driving record ever since I was first licensed to drive in May 1969.**"

In RFA 28, I requested verification of this: "You restored my permanent [driver's] license within 24 hours after I filed my brief in the PA Superior Court at 02308 PHL 83, and you were aware of the facts and laws recited in my brief for the preceding 2 1/2 years, while you were depriving me of the most basic adversarial and procedural rights an accused person is supposed to have." They "admitted that the Department of Transportation notified plaintiff on November 16, 1983 that his operating privilege was being restored effective that day pending the outcome of this appeal. Each and every remaining averment in this paragraph is denied." Notice how, at this stage, the defendants recast my interrogatories to ask something different, and then to provide a qualified response to their own, recast

interrogatory. The point here is that the defendant PennDOT provisionally restored my license within a day after my brief was filed in the PA Superior Court, which was over 2 1/2 *years* after I filed the appeal. Similarly, the Court of Appeals for the DC Circuit denied my Petition for Rehearing the day before the retroactive ADA became effective. (The delay was caused by the disappearance of the original record from the courthouse in Lancaster, PA. To the best of my knowledge, it has never been recovered.)

One of the most troubling answers was directed to RFA 29: "You never did have any medical reports from a doctor or from any medical personnel about any medical impairment you alleged I had." The defendants admitted this, yet they ". . . denied . . . that plaintiff had a medical impairment." Nevertheless, they attached the revocation notice dated 11-16-81 to their Summary Judgment Brief. The revocation notice, signed by defendant Pachuta, reads in relevant part: "Physical examination reports submitted by the physician of your choice revealed that you have a neuropsychiatric condition which is not compatible with the safe operation of a motor vehicle."

In RFA 30, I requested: "You authorized the mailing of an "Official Notice" dated 4-15-81 to me that requested me to "undergo an examination conducted by your [my] physician" after you knew, or should have known, that I had no doctor and no adverse condition that interfered with my ability to drive safely." Their response reads in relevant part: "Admitted that the Department sent plaintiff a notice dated April 15, 1982 directing him to undergo an examination conducted by his physician." They then deny that they should have known I had no doctor, even though I had so informed them at that time, as noted in my next RFA: "I responded to your 4-15-81 notice fully in a letter dated 4-20-81, when I explained the situation

completely." They "admitted that plaintiff responded to the Department's April 15, 1981 notice with a letter."

In RFA 34, I requested: "You did nothing to alleviate the effects of the unauthorized and improper revocation and suspension even after my permanent license was restored on 12-1-83." Here is the portion of the response admitting the RFA: "Admitted that the Department and its employer took no action after restoring plaintiff's driver's license." They continue, "Denied that there was any reason for doing so."

RFA 35, "You knew that an adverse history--one marked with a 2 1/2 year revocation for a "neuropsychiatric condition"--would and did comprise a substantial hardship for insurability, for licensure to drive in other states, and for admission to a licensed profession like the practice of law," should have been admitted without qualification, but it was answered: "Denied."

The police admitted RFA 36: "In an "Official Notice" dated 11-16-81, John Pachuta indicated that the revocation dated 11-16-81 was in addition to any previously issued suspension/revocation, and "credit toward serving said suspension will begin when license is received by Bureau."

Support for RFA 40, "You did not honor the procedural protections afforded by the Petition for Review, the Supersedeas, or the Stay at any time," which I had documented extensively in prior litigation, including the matter *sub judice*, is more convincing in view of the defendants' recent answer: "Admitted that the Department did not refrain from its efforts to obtain possession of plaintiff's driver's license." This intense and prolonged harassment from the police was the most important reason I moved to DC in 1982, where I worked at the US DOJ, after being issued a security clearance there. The police could not pursue someone through an agency's doors without authorization to gain access. I had such authorization; the pursuing

officers did not. Moreover, they had no reason to continue following me.

In RFA 41, I asked: "You did nothing to alleviate the effects of the revocations and suspensions even after my permanent license was restored on 12-1-83." Their response: "Admitted that the Department and its employees took no action after restoring plaintiff's driver's license. Denied that there was any reason for doing so. Denied that plaintiff suffered any ill effects from the recall of his license."

In RFA 42, I specified the time when the harassment became rather intense: "On 9-24-81, Officer Nicksic came to my home at RD 4, Box 434, Quarryville, PA, 19766, in southern Lancaster county, PA, and left a written note that directed me to find someone who would drive me to the police station." Their answer reads, "Admitted that Trooper Nicksic left a note directing plaintiff to surrender his driver's license to the State Police and find someone to drive him to the Lancaster Barracks." RFA 43, "On Friday evening, 3-26-82, Nicksic participated in an attempt to get physical custody over me by awaiting my return to my Quarryville home until almost mid-night," also shows how extreme the harassment became. Their response: "Admitted that Trooper Nicksic attempted to secure plaintiff's driver's license by going to his home sometime after the lift order was issued. Nicksic does not recall the date."

In RFA 45, I attempted to show an independent reason it was necessary for me to keep the license that was lawfully mine: "If you had been successful with getting my driver's license, you could also have succeeded with preventing my bank in DE from cashing checks, because I used my license for identification as well." They filed a objection: "This request calls for speculation."

In RFA 46, 47, and 48, I asked for verification about how the police harassed my neighbors and me by visits in person and by phone: "In March 1981, Officer Wilson visited my neighbors, like Verna Shirk and Sylvia May, and specifically asked them whether they could say where I was. On Wed., 11-25-81, Wilson called me at my apartment in Claymont, DE, and read a statement threatening further criminal prosecution if I did not send my driver's license back. On Tues., 12-22-81, Wilson called me in DE and again threatened further prosecution, including but not limited to sending more policemen out to get custody of me; at this time, your sergeant, believed to have been Nicksic, also talked with me in a highly abusive and threatening manner." As to each request, they filed the same , frustrating, non-response: "The answering parties can neither admit nor deny the information contained in this paragraph because it concerns actions allegedly taken upon a person who is deceased and who is not a party to this lawsuit." (As indicated in the caption, Phares Wilson was a party-defendant. The opposing attorney began to represent him but later claimed she made a mistake and did not want to represent him. Even later, she claimed he had died.)

The final RFA reads: "The 9-12-85 OCR [Office for Civil Rights] interview notes of John Landis [Professor at the Law School] disclose that McFarland and Landis, both on the faculty of Delaware Law School at that time, said, "Martin claimed that the police were following him. This all seemed a bit extreme (strange, parar ..d) to us. See Ex-4." The defendants answered: "The answering parties can neither admit nor deny the statement contained in this paragraph because they did not prepare the notes at issue and have no personal knowledge or John Landis."

Landis and McFarland, on the basis of mere speculation about the truth of the answers I posed to their questions after I finished my studies at

the Delaware campus of the Law School, referred their problems to the Law School's Admissions Committee, which decided, in a retroactive and foolhardy matter, that I had no correctly answered an unlawful question on their application for admission form. From that point, the School exported the fruits of its own unlawfulness to the Bars in various jurisdictions, including the respondent's Committee, where the disinformation was enthusiastically received and heartily endorsed.

Answers to Interrogatories from the related police-harassment case disclose the grave dangers one faces who dares to disclose a diagnosis of an adverse medical condition, even where that diagnosis was the result of a false-positive reading. Examples follow.

Interrogatory1. "The assault on my character, under the guise of emergency psychiatric care, was initiated on 2-2-75. From then until 3-81, you made no effort to inquire about or to revoke my driver's license. Explain in detail the reasons you waited until I was nearly finished with my first year in law school, over six (6) years later, before you attempted to interfere with my life and career under the guise of medical condition." Here is the Anwer, filed on 7-23-92, from the police and state of PA: "This interrogatory is objected to because it assumes facts which have not been established and uses inflammatory language. Without waiving the objection, the direction to plaintiff that he submit to an examination was triggered by his own admission that he had been diagnosed as having disability [sic] which impaired his driving ability.

Interrogatory 2. "Before 3-81 and even after 1981, you did not send out any questionnaire about a driver's medical condition when the license came up for renewal. Explain why you sent out a medical questionnaire in 3-81." Their Answer: "The request was made because Mr. Martin marked

yes to the question on the renewal form asking if the applicant had any mental or physical incapability or infirmity." (Notice how completely unresponsive their answer is. My question asks why their question about medical condition was originally posed to me, and has nothing to do with my answer to their question.)

Interrogary 3. "You had one form, a general medical questionnaire, for those drivers supposedly impaired from a non-neuropsychiatric condition, and another one for those allegedly suffering a neuropsychiatric impairment. Why did you send me the form for those drivers supposedly impaired from a non-neuropsychiatric condition?" Their Answer: "We did not have specific information regarding the condition." (This answer, despite the detailed correspondence informing them of the false diagnosis.)

Interrogatory 4. "In para. 11 of your Ans., you claim that I 'responded in the affirmative to the questionnaire and stated that his medical problem was in remission.' Why was the license restored if the problem was 'in remission'?" Their Answer: "The law requires the restoration pending the outcome of an appeal. Mr. Martin appealed so his license was restored." (The appeal was filed in the Lancaster County Court of Common Pleas on 6-11-81 at Trust Book 47, p. 30, which the defendants admitted [RFAs 16 and 18]; they also admitted "After I filed the Notice of Appeal on 6-11-81, you continued to pursue this matter [in violation of the stay] as though it were not pending in any court." My license was temporarily restored on 11-16-83, and permanently restored on 12-1-83. However, according to Theresa O'Neill, with PennDOT, it was never actually restored.)

Interrogatory 5. "Set forth the entire response I provided to your question about my medical condition, upon which you rely to allege that I

had an adverse medical condition." Their Answer: "Fiche and microfilm are available."

Interrogatory 6. "What criteria determined the motorists who were selected to be recipients of the general medical form you sent to me in 3-81? Was it sent to all motorists? If not, what basis determined who had to answer the questions about medical condition?" Their Answer: "All individuals applying for renewal were required to answer questions regarding medical conditions. The General Medical Form sent to Mr. Martin was because of his response." (This Answer is known to be incorrect.)

Interrogatory 7. "During the 12 years prior to 3-81, I was a licensed PA driver. Set forth all citations, arrests, convictions, and any other grounds, including medical diagnoses, that you allege comprised a basis for questioning my ability to continue driving in 3-81." Their Answer: "The basis for questioning the driving ability was answered in #2. Convictions, citations, etc. do not apply." (It is well-known that certain convictions and citations invariably comprise a lawful reason to question an applicant's ability to continue driving, and therefore to reject an application for renewal.)

Interrogatory 8. "What efforts have you made to ascertain the truth of the averments in complaint, para. 16 [para. 16 reads: "On 6-11-81, a local judge denied my efforts for relief without looking at the merits of the matter, so I sent a Notice of Appeal, which the Prothonotary stamped 'entered and filed' on 6-17-81, and she returned the time-stamped copy to me. The appeal was made to the PA Superior Court, but the rules of procedure mandated its filing with the trial court. Actually, the Prothonotary did not docket the appeal or send the file to the Superior Court; the file was unavailable for public inspection and the docket discloses no

appeal to have been filed."] Their Answer: "Defendants do not fully comprehend the relevancy of the averments in paragraph 16 of the amended complaint, therefore they made no efforts to ascertain the truth of these averments."

Int. 9. "Why didn't you honor the 6-11-81 Notice of Appeal, which acts as a supersedeas and a stay of the revocation/suspension notice?" Their Answer: "Defendants did not have personal knowledge of a 6/11/81 notice of appeal and were never advised by their counsel to take any action with respect to it."

Int. 11. "Provide the name and address of the medical doctor you relied upon to allege that I was medically unable to drive safely. Also summarize the doctor's report, as specify the date(s) when any medical examinations are alleged to have taken place." Their Answer: "There was no medical doctor involved. . . ."

Int. 16. "What is the current status of my license? If revoked, upon what grounds? (Consider tape recording of the O'Neill conversation.)" Their Answer: "The license is restored pending the outcome of the appeal." (That matter was resolved in my favor by order of the PA Superior Court-on 7-13-84.)

Int.17. "To the extent the police systematically record the phone conversations they have with suspects, or otherwise take notes or records of such conversations, set forth transcripts (or provide copies) of any materials that preserve the evidence about what occurred while you were attempting to get custody over me." Their Answer: "Defendants have no transcripts of telephone conversations or other materials evidencing conversations with plaintiff. Telephone conversations are not routinely tape recorded."

I traced some of the recent developments in the related case involving the police harassment and the revocation of my driver's license without notice, hearing, or cause, because of it relevance to this case. My doctor has no reason to believe I am "mentally or neuropsychiatrically impaired." See Ex-43, presented before the federal trial court. I have not seen a doctor for over five (5) years. The last time I saw a doctor was for treatment of athlete's foot.

An applicant for bar admission must document the absence of acts involving moral turpitude, which is the character standard for bar admission. No complaint or grievance has ever been filed against me in my entire life. The decisions chronicled in the related cases have usually entailed a perversion of basic terms. In the matter *sub judice* such a perversion appears in the 12-18-90 Order from the Committee, which says, "In *due course*[emphasis added] the Committee completed its inquiry . . .." I passed the Feb. 1983 DC Bar Exam, and the Committee did not complete its inquiry until 3-18-87, just over four (4) *years* after I passed the exam. The respondent DC Court of Appeals impounded this matter for more than four (4) more years, until 8-5-91. The protracted delay evidences pronounced "undue course."

Another illustration of the remarkably "undue course" of the proceedings below occurred in 1983, after I was notified that I failed the DC Bar Exam. I participated in the Post Examination Review Procedure and soon determined that I had actually passed the exam with a comfortable margin. I reported my findings in accord with the prescribed procedures, but the Committee's members were so belligerent that they persisted with claiming that I failed the Exam. For example, in a "Petition for Regrading," I noted, "I gave a short reason for each legal conclusion and should therefore be

awarded at least the minimal passing grade for my answers. The correct conclusions of law for each of the parts of this answer strongly suggests I did not arrive at these results without knowing the UCC rules with their proper applications." An examiner wrote that my answer "does not explain why [emphasis in original]."

My petitions, although they showed rather conclusively that I did pass the exam, were denied, so I had to return yet again, and this time I was more forceful. To illustrate, here is what I wrote on a Petition for Further Review: "This review should consider . . . the fact that my answers were correct . . .." In response to the examiner's justification for the failing score attributed to me--that I did not explain why--I accurately noted that the question ". . . only requires a recitation of the rules and of the parties' liabilities. . . . An examinee could not be expected to infer that the grading standard regarding the extent of the requested answer is the same for . . . [each question] in light of the request for a full discussion and underlying reasons in . . . [one] and the lack of any such request in . . . [another]." The examiners reported that I failed essay questions I had answered correctly, and that is the reason they reported, two times, that I failed the Feb. 1983 Exam before finally being compelled to concede that I passed the Exam, on account of demonstrably objective questions included in the essay section that I had answered correctly and accurately as to all parts.

The respondent Committee's misconduct did not stop with their misreporting of my score and initial refusal to correct it. Near the end of the essay exam, which I was typing, the power was turned off for all the typists in the row I was in. Some became rather upset and demanded more time. I quickly hand-wrote my answers to the remaining essay questions. When the respondent began to argue with me about whether I had passed their

essay exam (my having passed the MBE, which is the objective test, was not disputed), I informed them about the power outage. Anthony Nigro, the respondent's Director of Admissions at that time, wrote back and denied that any power outage occurred. I responded by letter dated 8-8-83, "I regret to learn that the proctor never reported the problem to you and that you do not believe my statements. Whether any such problem arose is simply a question of fact, ... I request that a factual inquiry about this matter be directed to those typists who sat in the same row as I did . . . , which investigation will confirm the fact of the power problem." Nigro's response, dated 8-12-83, is at Ex-52a of the Cert. Petition filed here at No. 91-5476. ". . . [Y]our request for a factual investigation will be presented to the Committee for its consideration."

RELATED CASES AND PROCEEDINGS

See this section in Martin v. Sparks, No. 92-5068, filed here on 7-1-92.

REASONS THE WRIT SHOULD ISSUE

A. Under the Americans with Disabilities Act (ADA), signed on 7-26-90, discrimination on the basis of physical or mental handicap, if an applicant is otherwise qualified to work, is unlawful across the board.

Over 40 million Americans are to be affected. The House of Representatives approved it, on 7-12-90, 377-28; the Senate approved it, on 7-13-90, 91-6. President Bush vetoed, on 10-20-90, the Civil Rights Act of 1990. The Senate, on 10-24-90, failed by one vote to override the veto, but the legislation passed the following year as the Civil Rights Act of 1991. It made the ADA retroactive as to pending cases, which should include the case at bar.

These respondents are liable to me for endorsing the patently unlawful questions about remote medical condition the Law School posed to me on its application form, and for adding many related questions of their own about remote medical condition, and basing those questions upon equally unlawful classifications without certifying any specific issue for an interview. In view of the lack of any justiciable issue, I had no right to subpoena any witnesses and no opportunity to prepare.

Because the Rehabilitation Act of 1973 and the Civil Rights Restoration Act of 1987 failed to completely eliminate the vestiges of discrimination rooted in accusations about disability, Congress passed additional legislation, which President Bush signed, and much of this new legislation became effective after this case arose. The final part of the legislation became effective, retrospectively, on 7-26-92.

For example, the relevant text of the federal "Americans with Disabilities Act of 1990," specifically, the "Congressional findings," at Sec. 12101(a), are set forth here:

"(a) Findings. The Congress finds that--

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and . . . such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, . . . education, . . . and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, . . . overprotective rules and policies, . . . exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity."

Congress continued, in subsec. b, to set forth the purpose of the Act in these terms:

"(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities."

Sec. 12102 defines "disability" in terms like those in the Rehabilitation Act of 1973, Sec. 504:

"(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
(B) a record of such an impairment; or
(C) being regarded as having such an impairment."

This definition was taken from the Rehabilitation Act's definition of a "Handicapped individual," who includes not only those who admit a handicap others diagnosed or observed in them, but it also extends to a person:

"(ii) Who has a record or such impairment; or
"(iii) Who is regarded as having such an impairment."
45 CFR Sec. 1361.1(k)(2)(ii)-(iii).

As set forth in Sec. 12112(a) of Title 42, USC, the "general rule" is:

"No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to . . . terms, conditions, and privileges of employment."

State parties and those under contract with them, like the respondents, are covered entities. See Sec. 12102(3), and Sec. 12111. According to Sec. 12112(b), ". . . the term 'discriminate' includes--

* * * * * * * * *

"(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity."

The respondents' discrimination contravenes the express dictates set forth in Sec. 12112(c), entitled "Medical examinations and inquiries:"

"(1) In general. The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries."

In addition to the ADA, the Congress enacted other recent and dispositive legislation governing the issue at bar, which President Bush signed on 11-21-91, to specifically provide for compensatory and for punitive damages for victims of intentional discrimination based on medical disability or of a record of it. See Civil Rights Act of 1991 (P. L. 102-166), hereafter "CRA."

According to Sec. 402(a) of the CRA, the ". . . Act and the amendments made by this Act shall take effect upon enactment."

Senator Kennedy's "Interpretive Memorandum," dated 11-5-91, Cong. Rec. (S 15963) indicates that the legislation is designed to be retroactive:

". . . Courts frequently apply newly enacted procedures and remedies to pending cases. That was the Supreme Court's holding in Bradley v. Richmond School Bd., 416 US 696 (1974), and Thorpe v. Housing Authority, 393 US 268 (1969), in which the Court stated: 'The general rule is that an appellate court must apply the law in effect at the time it renders its decision.'

"And where a new rule is merely a restoration of a prior rule that had been changed by the courts, the newly restored rule is often applied retroactively, as was the case with the Civil Rights Restoration Act of 1988 [The courts did not apply the Restoration Act to these related cases.]

"Many of the provisions of the Civil Rights Act of 1991 are intended to correct erroneous Supreme Court decisions and to restore the law to where it was prior to those decisions. In my view, these restorations apply to pending cases, which is why the supporters of the Murkowski amendment sought specific languange to prevent the restoration from applying to that particular case [Wards Cove Packing v. Atonio, 490 US 642 1989]. In fact, the adoption of the Murkowski amendment makes it more likely that the restoration in the act will apply to all cases except the Wards Cove case itself."

According to Senator Dole's "Legislative History, Technical Corrections," dated 11-5-91, Cong. Rec. (S 15953):

"The intention of this amendment to section 402 is simply to honor a commitment to eliminate every shadow of a doubt as to any

possibility of retroactive application of the case involving the Ward Cove Company."

According to Senator Murkowski's "Amendment" dated 11-5-91, Cong. Rec. (S 15954):

"As presently drafted, Section 22 [402] of S. 1745 [CRA] would apply retroactively to all cases pending on the date of enactment, regardless of the age of the case. My amendment will limit the retroactive application of S. 1745 . . ..

"To the best of my knowledge, Wards Cove Packing v. Atonio is the only case that falls within this classification."

The CRA guarantees compensatory and punitive damages under new Sec. 1981A of Title 42 USC for victims of intentional employment discrimination in violation of the Americans with Disabilities Act of 1989 [42 USC Sec. 12117], hereafter, "ADA." The CRA also creates a right of action under new Sec. 1981A for compensatory damages for "qualified individuals with disabilities" by federal agencies and departments in violation of the Rehabilitation Act of 1973. Under the Rehabilitation Act, the CRA, and the ADA, an individual with a "disability" is one who has a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment. Individuals misdiagnosed or misclassified are specifically covered by this legislation. "Major life activities" covers "working."

Sec. 1981A awards include any equitable relief authorized under Title VII. The Fees Act was also amended to allow expert's fees and attorney's fees under Sec. 1981A as well as under Title VII.

According to the HR Committee Notes, "States are not immune under the 11th Amendment of the United States Constitution for violations of the Act [ADA]." These respondents previously claimed that the 11th Amendment should protect them.

The CRA and ADA apply to federal agencies, state governments, Congressmen, and even to the White House. Private employers are also subject to these statutes. As many commentators noted, it applies across the board. Like the 13th Amendment, the legislation extends to all persons, whether public or private, and there remains no immunity of any kind to excuse discrimination based on a remote, false diagnosis of medical disability.

The EEOC issued an "Appendix to Part 1630--Interpretive Guidance on Title 1 of the ADA," as set forth in the Fed. Reg., Vol. 56, No. 144, 7-26-91. According to the background section,

"The ADA is a federal antidiscrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities.

"Like the Civil Rights Act of 1964 that prohibits discrimination on the bases of race, color, religion, national origin, and sex, the ADA seeks to ensure access to equal employment opportunities based on merit. It does not guarantee equal results, establish quotas, or require preferences favoring individuals with disabilities over those without disabilities.

"However, while the Civil Rights Act of 1964 prohibits any consideration of personal characteristics such as race or national origin, the ADA necessarily takes a different approach. When an individual's disability creates a barrier to employment opportunities, the ADA requires employers to consider whether reasonable accommodation could remove the barrier."

In Sec. 1630.2(k), "Record of a Substantially Limiting Condition," the EEOC explains that the ADA is designed to protect those persons who have been misclassified as having had an illness:

"The second part of the definition provides that an individual with a record of an impairment that substantially limits a major life activity is an individual with a disability. The intent of this provision, in part, is to ensure that people are not discriminated against because of a history of disability. For example, this provision protects former cancer patients from

discrimination based on their prior medical history. This provision also ensures that individuals are not discriminated against because they have been misclassified as disabled. For example, individuals misclassified as learning disabled are protected from discrimination on the basis of that erroneous classification. Senate Report at 22; House Labor Report at 52-53; House Judiciary Report at 29."

Even where an individual cannot satisfy either the first part of the definition of disability or the second part, regarding those with a record of once having had a disability, an individual may nonetheless be protected where the employer or other covered entity regards the person as having an impairment that substantially limits a major life activity. The EEOC, at Sec. 1630.2(l), "Regarded as Substantially Limited in a Major Life Activity," sets forth three ways by which an individual may satisfy the definition of "being regarded as having a disability:"

"(1) The individual may have an impairment which is not substantially limiting but is perceived by the employer or other covered entity as constituting a substantially limiting impairment;

"(2) The individual may have an impairment which is only substantially limiting because of the attitudes of others toward the impairment; or

"(3) The individual may have no impairment at all but is regarded by the employer or other covered entity as having a substantially limiting impairment."

Senate Report at 23; House Labor Report at 53; House Judiciary Report at 29.

Stereotypes and myths surrounding those who have been imputed with a mental impairment are especially disabling, as the history of these related cases shows. Because of the similarity between the ADA and the Rehabilitation Act of 1973, Sec. 504, this Court's comments in School Board of Nassau County v. Arline, 480 US 273 (1987), should control for the ADA as well. The Court noted that, although an individual may have an impairment

that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling:

"Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as the result of the negative reactions of others to the impairment." 480 US at 283.

The Court concluded that by including "regarded as" in the Rehabilitation Act's definition,

"Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment." 460 US at 284.

According to Sec. 1630.9, "Not Making Reasonable Accommodation," the EEOC focussed upon a covered individual's obligation to meet the "otherwise qualified" standard:

"The term 'otherwise qualified' is intended to make clear that the obligation to make reasonable accommodation is owed only to an individual with a disability who is qualified within the meaning of Sec. 1630.2(m) in that he or she satisfies all the skill, experience, education, and other job-related selection criteria. An individual with a disability is 'otherwise qualified,' in other words, if he or she is qualified for a job, except that, because of the disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

"For example, if a law firm requires that all incoming lawyers have graduated from an accredited law school and have passed the bar examination, the law firm need not provide an accommodation to an individual with a visual impairment who has not met these selection criteria. That individual is not entitled to a reasonable accommodation because the individual is not 'otherwise qualified' for the position.

"On the other hand, if the individual has graduated from an accredited law school and passed the bar examination, the individual would be 'otherwise qualified.' The law firm would thus be required to provide a reasonable accommodation, such as a machine that magnifies print, to enable the individual to perform the essential functions of the attorney position,

unless the necessary accommodation would impose an undue hardship on the law firm. See Senate Report at 33-34; House Labor Report at 64-65.

"The reasonable accommodation that is required by this part should provide the qualified individual with a disability with an equal employment opportunity."

The obligation to refrain from discriminating against an applicant for bar admission on account of accusations about a remote medical record are clear enough. Because no special architectural accommodations are required, compliance with the national mandate, as set forth in the ADA, should have already occurred. Instead, the respondents have been lavishing resourses on a defense that offers no prospects for any long-term success.

The trial judge relied upon the related MD and VA cases. See 4a. On p. 4 of the opinion from the VA case, the judge wrote,

"Plaintiff's first claim is brought under the Rehabilitation Act, 29 USC Sec. 794. Section 794 provides that 'Ino otherwise qualified individual with handicaps in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.' An element of a claim under this section is that the program receives federal financial assistance. It is undisputed that neither the Board nor the National Conference [of Bar Examiners] receive funds directly from the federal government."

The terms of the ADA illustrate how far afield this VA judge was. The MD judge's opinion was so extremely removed from the scope of reason as to be properly disregarded completely. Because the trial judge in DC simply relied upon the related VA case's holding, that ruling must fail for the same reason the VA opinion is no longer valid.

B. THE FEDERAL COURT MAY EXERCISE SUBJECT-MATTER JURISDICTION OVER STATE COURTS FOR IMPOUNDING A BAR ADMISSION PROCEEDING FOR NEARLY SEVEN (7) YEARS WITHOUT ISSUING A FINAL DECISION, WHERE THE STATE COURT REFUSES TO CERTIFY ANY ISSUES THAT

WARRANT DENIAL OF A LAW LICENSE AFTER AN APPLICANT PASSED THE BAR EXAM.

In related litigation, the respondents claimed DC Court of Appeals v. Feldman, 469 US 462 (1983) means that no individual bar applicant has standing to seek review of a particular state court's bar admission decision, so that only general challenges to the validity of state bar rules may be heard in federal court, presumably by groups of aggrieved applicants in a class action setting. This is demonstrably incorrect, for this Court held, in Feldman, that a bar applicant would first need to show denial of his application as a prerequisite to filing for a remedy in federal court under the case or controversy requirement:

"When a claim is made in a state court and a denial of the right is made by judicial order, it is a case which may be reviewed under Article III of the Constitution . . .."

Feldman, 460 US 462, 479.

Both Feldman and Hickey asked for special waivers of the court's rule restricting admission to those applicants who had graduated from ABA-accredited law schools: "Having passed the VA bar examination, Feldman was admitted to that State's bar in April 1976. * * * * "Feldman passed the Maryland examination and later was admitted to that State's Bar." 460 US 465. Similarly, Hickey sought a waiver based on particular attributes unique to himself as an individual bar applicant:

". . . Hickey stated that his 20 years of military service had demonstrated 'far beyond that of the average bar exam candidate, that he possesses the qualities essential to a good lawyer, including: judgment, maturity, courage in the face of adversity, concern for his fellow man, commitment to our society and attention to detail'."

460 US 471, 472.

This Court concluded that the denial of the applicants' petitions for waiver "in view of its former policy of granting waivers to graduates of unaccredited law schools . . . required the District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case." Id., at 486. As such, the federal court had no jurisdiction. However, the Supreme Court held that the remaining claims were properly before the federal trial court:

"The respondents' [bar applicants'] claims that the rule is unconstitutional because it creates an irrebutable presumption that only graduates of accredited law schools are fit to practice law, discriminates against those who have obtained equivalent legal training by other means, and impermissibly delegates the District of Columbia Court of Appeals' power to regulate the bar to the American Bar Association, do not require review of a judicial decision in a particular case."
Id., at 487.

My complaint against these respondents, at para. 60, avers that my challenge was directed to the validity of the state bar rules and, as such, could be resolved without reference to any decision of the DC Court of Appeals on my application for licensure:

"The defendants' [respondents'] classification of applicants into two classes, those with an adverse medical past supposed to have been somehow rooted in neuropsychiatric condition on the one hand, and those with a history of physical impairment on the other, comprises an unprivileged discrimination against those once believed to have suffered a neuropsychiatric handicap, as contrasted with the applicants deemed to have once suffered from a physical disease, who are not disfavored. This classification violates the Equal Protection Clause."

The respondents posed patently unlawful questions about remote medical condition to me and based those questions upon equally unlawful classifications without certifying any specific issue for a hearing; the issue was no more specific than "character and fitness to practice law." In view of the lack of any justiciable issue, I had no right to subpoena any witnesses

and no right to prepare. This amounts to an extraordinarily unlawful practice much like an inquisition regardless of what the resolution is, although I would not have standing under the case or controversy requirement of Art. III if I had not been injured as an individual applicant.

The respondents attempted to graft into bar admission cases a requirement that a challenge be made to a general bar rule not dependent upon any particular person's application to the state bar, which issue Justice Frankfurter clarified as early as 1957, in Schware v. N. Mexico Bd. of Bar Examiners, 353 US 232 (1957), upon which the Feldman court relied:

"A very different question is presented when this Court is asked to review the exercise of judgment in refusing admission to the bar in an individual case, such as we have here.

"It is beyond this Court's function to act as overseer of a particular result of the procedure established by a particular State for admission to its bar. No doubt satisfaction of the requirement of moral character involves an exercise of delicate judgment on the part of those who reach a conclusion, having heard and seen the applicant for admission. . . .

* * * * * * * *

"But judicial action, even in an individual case, may have been based on avowed considerations that are inadmissible in that they violate the requirements of due process. Refusal to allow a man to qualify himself for th profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the Due Process Clause. Such is the case here [accusations about remote membership in the Communist Party, meeting in the US]."

Id., at 248, 249.

The Schware decision indicated that a membership in the Communist Party, especially during one's remote past, could not comprise a legitimate, rational basis to doubt one's moral fitness to practice law.

"[T]he evidence upon which the State relies--the arrests for offenses for which petitioner was neither tried nor convicted, the use of an assumed name many years ago, and membership in the Communist Party during the

1930's--cannot be said to raise substantial doubts about his present good moral character."

Id., at 246.

The respondents' impounding of my application for over eight (8) years was a denial, without right to timely review, and the method by which this outrage is being carried out conflicts with this Court's holding in Konigsburg v. State Bar of CA, 353 US 252 (1957), cited in Feldman at 460 US 482, ftn. 15:

"These cases [California bar admission cases] instead appear to define 'good moral character' in terms of an absence of proven conduct or acts which have been historically considered as manifestations of 'moral turpitude'."

Konigsburg, 353 US 252, 263 (1957). The Court continued, "Even more significant, not a single person has testified that Konigsberg's moral character was bad or questionable in any way." Id., at 265. This criterion should be weighed in the matter at bar: no one ever testified that my character was bad or questionable in any way at any time. Instead, the National Conference of Bar Examiners adopted a letter from the Delaware Law School's Faculty Secretary about my remote medical history without even examining the letter to ensure that it accurately represented what the School's *ad hoc* group decided in a proceeding that rivals, in many ways, what has been occurring before the respondents for several years: a renunciation of the rights supposed to be characteristic of our adversarial system. As the Faculty Secretary's affidavit of 8-10-88 discloses, at Ex-43a attached to the Cert. Petition filed here at No. 91-5476, the initial letter upon which the respondents relied, was not correct. "Confined" means, in the context of mental health law in PA, which controls since PA is where I was living when I filed the application to attend law school in 1979, ". . . legally

committed or voluntarily or involuntarily restrained because of incompetence." Pa.R.Civ.P. 2051(B)(2). I was never "committed," although I often demanded a hearing where anyone would have had the right to appear and to testify if I had ever made some threat to pose a danger either to others or to myself. The parties responsible for my warehousing did understand that nothing warranted my summary detention under the benevolent guise of emergency medical treatment, but they proceeded nonetheless and ignored my demands for a hearing.

In Konigsberg, the State relief upon "testimony of an ex-Communist that Konigsberg had attended meetings of a Communist Party unit in 1941;" Id., at 266. The State proceeded under the supposition that certain vague questions could be answered "correctly" or "incorrectly" with a "yes" or a "no:"

"And in response to a Bar Examiner's question as to whether he was a communist, in the philosophical sense, as distinguished from a member of the Communist Party, Konigsburg replied, 'If you want a categorical answer to 'Are you a communist?' the answer is no."

Id., at 267.

Questions about remote medical past have no rational relationship to issues of moral character, or upon fitness to practice law, regardless of whether an applicant chooses to answer them correctly, as I did, or whether an applicant disregards them. The classic bar admission cases were not overruled in Feldman; to the contrary, the Feldman Court relied upon them to a large extent:

"Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an

applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory."

Schware v. Board of Bar Examiners, 353 US 232, 239 (1957). The Feldman Court simply indicated that federal courts had no jurisdiction over rulings on waiver petitions brought before state courts of last resort, rulings which required the state court to examine an individual applicant's particular scholastic and criminal record, and to determine whether such applicant's waiver petition for special, preferential treatment should be granted. I am not asking to be given any special, preferential consideration; I am merely pointing out that it is patently unlawful to be singled out and denied bar admission on account of accusations about remote medical past, now over seventeen (17) years old. This Court could direct the federal district court to proceed with the case pending there and, at the same time, reverse the decision from the respondent state court below.

The procedural prolongation rivals the contempt for substantive statutory and constitutional guarantees. The 8-13-90 issue of the *National Law Journal* carried an article by Randall Samborn, "Will Disabilities Law Produce Litigation?" He explains that the newly enacted federal statute duplicates what state and federal laws already provide:

"In many ways the law mirrors the provisions and definitions found in scattered state and local laws and the Rehabilitation Act of 1973, which bars bias against the disabled by the federal government, federal contractors, and recipients of federal funds. But the new legislation is considered daunting by many because of its pervasive impact on the private sector." p. 12. * * * "Hailed as the most sweeping civil rights law in a quarter century, . . ." p. 3.

Paul Marcotte, in the Nov. '90 *ABA Journal* wrote an article about the same enactment:

"The ABA incorporates remedies of Title VII of the 1964 Civil Rights Act giving employees the right to sue for reinstatement, back pay and other injunctive relief after exhausting their administrative remedies . . ." p. 22.

In Zinermon v. Burch, 58 USLW 4223, 110 S. Ct. 975 (1990), the Court held that a voluntary admission is unconstitutional because an inmate alleged to be psychotic cannot give informed consent. Even if the falsified medical records attributed to me were accepted, my incarceration would be unconstitutional because an individual alleged to be psychotic cannot give consent for his treatment, and the institution alleges I "consented" to their mistreatment of me. A guardian must be appointed, and no such guardian ever was appointed. I have not been discharged from "care" to this day.

The respondent Court once purported to rely upon In Re Demos, 564 A. 2d 1147 (DC App. 1989), where applicant Demos was rejected on account of various criminal convictions, including assault and contempt of court. I have no criminal record; Demos is not applicable. Persons convicted of felony murder, bank robbery, and drug dealing have been admitted to the DC Bar. In Re Manville (Manville II), 538 A. 2d 1128 (DC 1988) (*en banc*).

I am also doing what I can to mitigate damages by continuing to represent those clients who retained me before the federal licensing authorities attempted to impair my credentials with their endorsement of the scam originating at the state level in NJ. In the related NJ case, President Judge John Gerry noted on p. 3 of an Opinion dated 5-24-88:

"Finally, we join both Judge Cowen [now serving on the Third Circuit Court of Appeals] and Magistrate Wolfson in noting that our deference to state proceedings has its limits, and that those limits are rapidly coming into sharper focus."

Judge Gerry went on to note, on p. 2 of the Opinion, ". . . [W]e also note that certification by the state might not necessarily mean that certain of plaintiff's federal claims could not continue to be advanced." Martin v.

Townsend, NJ Supreme Court Committee on Character, et. al., 826 F. 2d 1056, 108 S. Ct. 191 (1987), app. to 3rd Cir. again, No. 88-5862, cert. den., 88-7435,--US--, reh. den., 11-27-89, app. to 3rd Cir. again, No. 90-5417, cert. den., No. 90-6230, reh. pending. (NJ Magistrate Wolfson ruled on some motions to temporarily fill the vacancy when Judge Cowen was promoted. She cited Hickey v. DC Court of Appeals, 456 F. Supp. 584 (D.D.C. 1978) as a possible basis for a federal court's exercise of jurisdiction over state bar admission and law licensure, where "compelling circumstances" are at stake. Hickey, 457 F. Supp. at 580.) Those claims are continuing to this day, and similar claims should be allowed to proceed in the matter here.

C. DEFERENCE TO THE PROLONGED AND UNCONSTITUTIONAL IMPOUNDMENT OF MY BAR APPLICATION, CULMINATING WITH ITS DENIAL FOR A PATENTLY UNLAWFUL REASON, MUST NOT BE ACCORDED THE STATE UNDER EITHER COMITY OR ABSTENTION.

As the State suggested in a Memo in related litigation, comity and abstention only apply in those cases where "an adequate opportunity to raise federal questions in the [state] proceedings" has been afforded, and where there is an active "state judicial proceeding." The State gave me no opportunity to raise such questions, because it denied all the customary rights normally associated with our adversary system, including the initial right to know what the issue is. If one is denied the right to know what specific issue is in controversy, one is necessarily denied the right to answer any concerns raised by the State, and even if the State had granted me the right to subpoena, I would not have known what witnesses to call, for I was never advised about what specific issue I was expected to address.

Although federal courts often defer to state decisions under the doctrine of comity, it does not apply where the state refuses to issue a

decision. Until recently, I believed that I could resort to the US Supreme Court for issuance of a Writ of Mandamus/Prohibition or a Writ of Injunction directed against the defendant State Court, but the Clerk of the US Supreme Court has consistently refused to docket my Petition, as indicated in the correspondence from the Clerk's Office of the Court at Ex-44a to 47a attached to the Cert. Petition at No. 91-5476. A Petition for Writ of Certiorari was not permissible, because that depends upon an Order, which the state court refused to issue for many years.

If the respondents' contentions about comity and abstention were accurate, the recent decisions from the US Supreme Court concerning bar admission would never have been issued, because those matters were litigated in the federal trial courts and not in the state courts of last resort. For example, in Supreme Court of VA v. Friedman, 108 S. Ct. 2260 (1988), a "nonresident's interest in practicing law on terms of substantial equality with those enjoyed by residents is a privilege protected by the [Privilege and Immunities] Clause." Id., at 108 S. Ct. 2260, 2267.

This Court ruled on many occasions that the P & I Clause guarantees to citizens of the nation that they may do business within a state on the same terms as the citizens of that state. See ABA JOURNAL, "Last Chapter for Bar Residency Rules?" 3-1-88, pp. 68 - 72, where Supreme Court of NH v. Piper, 470 US 274 (1985) was heavily relied upon. There, in an 8-1 vote, this Court held a Vermont rule that barred non-residents who had passed the bar exam from joining the Vermont bar to be violative of the Privilege and Immunities Clause.

As Friedman asserted in the district court, the VA Supreme Court's residency requirement also violated the Commerce Clause and the Equal Protection Clause of the 14th Amendment. Although these claims were not

addressed, the decisive trend in recent years has been toward further federal oversight over unconsitutional rules applied to bar applicants aggrieved as individuals, and away from requests for waivers, where individuals do not complain about the perceived unlawfulness of certain rules, but rather seek exceptions, or waivers, referrable to their own peculiar circumstances. The US Supreme Court decisions governing bar admission are also applied to federal district courts. For example, in Barnard v. Thornstenn, No. 87-1929, --US--, the Supreme Court unanimously invalidated a local rule of the District Court of the Virgin Islands requiring all federal bar applicants to have lived in the Virgin Islands for at least one year and that they state the intention to reside in and to practice law there. None of these decisions would issue if federal district courts declined to accept such cases on comity grounds, because this Court will not grant relief in a waiver case, which leaves the federal trial court as the sole forum.

D. THE RESPONDENTS DO NOT ENJOY ABSOLUTE JUDICIAL IMMUNITY FOR THEIR CHRONIC DISCRIMINATION AGAINST ME BASED ON THEIR IDEAS ABOUT MY REMOTE, ALLEGEDLY ADVERSE, MEDICAL HISTORY.

Even if the state judicial personnel are entitled to some degree of immunity, "... [J]udicial immunity does not extend to prayers for declaratory or injunctive relief." Pierson v. Ray, 386 US 547, 554 (1967), relied upon in Simons v. Bellinger, 643 F. 2d 774 (1980), at 791-791, ftn. 15. Therefore, claims for an injunction and for declaratory judgment, which are claims 6 and 7 in the complaint, should be granted here.

The respondents principally relied upon Simons for absolute judicial immunity extended to the member-judges, and of all their defenses, this one is the most controversial. Simons ensures that the federal district court has subject-matter jurisdiction over claims like those arising in the case at bar.

However, Simons, in reliance upon the line of authority beginning with Stump v. Sparkman, 435 US 349 (1978), presupposes some active judicial effort to either issue a decision or to authorize an investigation, like one undertaken by appointees of a state court of last resort, which occurred in Simons, when the Committee governing Unauthorized Practice in DC inquired about the standing of lawyers listed in the yellow pages in DC, who were not admitted to the DC Court of Appeals but who were licensed and authorized to practice in DC federal and administrative tribunals. The Simons court held, and the dissent even agreed, that the State Committee was authorized to investigate the Simons' law practice, and that such investigation was both reasonable and lawful.

Would the result be the same if the Committee conducted an investigation that was neither reasonable nor lawful? What if the Committee had an obligation to the Simonses to conduct a security clearance for them and refused to either grant or to deny it for over eight (8) years, where the aggrieved parties did not contribute to the outrageous delay, and where they were restrained from the conventional practice law in the prolonged interim?

The answers are traceable to the seminal immunity cases as early as Bradley v. Fisher, 13 Wall. 335 (1872), when judicial officers were protected so long as they affirmatively exercised authority vested in them. Those who go well beyond the authority vested in them have never been afforded immunity, nor those who, despite authority vested in them, impound cases year after year, without decision, so that aggrieved parties have no recourse to have their federal rights restored. Although the respondents do have the right to issue decisions on bar admission cases, they have no right to refrain from issuing a decision in a bar admission case for over eight (8) years, to

misreport scores and to persist even after it becomes clear that the scores are incorrect, and to purport to rely upon the ruling in a bar admission case where the applicant was a criminal as the only authority for denying an individual's application who has an unblemished lifetime record.

According to the Rehabilitation Act of 1973, Sec. 504, those once regarded as having been afflicted with an illness should not suffer discrimination on account of their remote medical record, so that the Act is a basis for relief without the constitutional claims, and immunity does not shield even state courts from liability for money damages under the Act, especially since the Civil Rights Restoration Act of 1987. "Eligibility" for the Act's coverage depends upon a "mental or physical disability that results in a substantial handicap to employment." 45 CFR Sec. 1361.1(f); 29 USC Sec. 706(6).

"Handicapped individual" includes not only those who admit a handicap others diagnosed or observed in them, but it also extends to a person:

"(ii) Who has a record or such impairment; or

"(iii) Who is regarded as having such an impairment."

45 CFR Sec. 1361.1(k)(2)(ii)-(iii). There is no judicial immunity, whether absolute or merely qualified, for those who abrogate applicants' rights incident to professional licensure, as set forth in 45 CFR Sec. 84.10(a):

"The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility or qualified handicapped persons to receive services or to practice any occupation or profession."

In Carter v. Orleans Parish Public Schools, 725 F. 2d 261 (5th Cir. La. 1984), the Rehabilitation Act was held to establish a private right of action

not only for the handicapped, but also for those improperly classified as handicapped. In another similar case, Doe v. Syracuse School Dist., 508 F. Supp. 333 (ND NY 1981), the plaintiff sued a school district and alleged that the school, by inquiring with the plaintiff during a pre-employment inquiry about whether he was mentally ill or had ever been treated for mental illness, violated the Act as refined in 45 CFR Sec. 84.14 (providing that recipients of federal funds may not make pre-employment inquiries of an applicant as to whether he is handicapped or as to the nature and severity of a handicap). The plaintiff prevailed on a motion for summary judgment, since the pre-employment inquiry was precisely what the regulation sought to eliminate. The prohibition is directed against asking the question; the regulation does not focus attention upon what answer, if any, the applicant provides. In that sense, the wrong sought to be enjoined is similar to asking about an applicant's race, sex, national origin, religion, or other area long protected from inquiry, and supposed to be unlawful as a basis for discrimination.

In the Third Circuit, the federal district court held, "With near unanimity, the courts have inferred from the legislative scheme Congress' intent to create a private right of action under section 504 [of the Rehabilitation Act of 1973]." Nelson v. Thornburgh, 567 F. Supp. 369, 382 (ED Pa. 1983), aff'd w/o op., 732 F. 2d 146 (3rd Cir. 1984), cert. den., 105 S. Ct. 955 (1985). Nelson concerned a blind, income maintenance worker who needed a "reader" to continue working at the Dept. of Public Welfare. After commenting upon the availability of damage remedies to enforce "the deterrent effect of the non-discrimination law," the Court concluded:

"The Supreme Court has stated that '[t]he existence of a statutory right implies the existence of all necessary and appropriate remedies.' . . .

[I]t is a fair canon of statutory interpretation to indulge the presumption that Congress intended that the full panoply of remedies be available to the private plaintiff under section 504." Id., at 383.

Lingering doubts about the scope of the Rehabilitation Act were greatly alleviated with Congress' passage of the Civil Rights Restoration Act of 1987, enacted on 3-22-88, which contains an amendment specifically referrable to the Rehabilitation Act and, effective 7-26-92, the ADA:

"[T]he term 'program or activity' means all the operations of--'(1)(A) a department, agency . . . of a State . . .'" P.L. 100-259, Sec. 4(b)(1)(A). The relevant law is at Ex-23 to 25. To gather "character" information, the state courts of last resort rely heavily upon the NCBE, a private entity under contract with the State, upon the law schools (in the matter at bar, the School was a private recipient of Federal funds), and upon such law enforcement agencies as the Federal Bureau of Investigation for each applicant's criminal history.

Even before the Civil Rights Restoration Act became effective on 3-22-88, the CFR classified, under "Federal financial assistance," any arrangement by which the federal government makes assistance available in the form of: "(2) Services of Federal personnel; . . ." The FBI and other law enforcement authorities do contribute their services to character and especially to criminal background investigations incident to admission before the respondent DC Court of Appeals. According to 45 CFR Sec. 84.11(a)(4),

"A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants . . . to discrimination prohibited by this subpart."

The reference to "other relationship" necessarily includes the relationship between the State respondent on the one hand, and the private recipient of Federal financial assistance (Delaware Law School, my *alma mater*), the NCBE,

and the FBI on the other hand. The School provides certifications about good character or, in my case, about the faculty's casual impression concerning my remote medical history (although none of them were ever qualified as medical personnel in any capacity, however slight) to the State Committee and to the Committee's private agent for background investigation, the NCBE. Even if the scope of the Rehabilitation Act is read narrowly, case law provides, in what is known as the *Evans* doctrine, that "[c]onduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action." Evans v. Newton, 382 US 296, 299 (1966). The nexus between the State court and the private party is sufficiently clear to warrant the imposition of money damages against the private party, the NCBE, even if the State defendants were accorded some measure of immunity for their inaction, so that the private parties, who are not immune, are liable for what the State respondent would otherwise pay. See Dennis v. Sparks, 449 US 24 (1980). Accordingly, even without the ADA, which became retroactively effective the day after the appellate court's decision of 7-24-92, I should have prevailed.

The Office for Civil Rights already issued a decision in my favor on the basis of the Rehabilitation Act of 1973 and issued me authorization to sue the State respondent as well as their private contractors for character investigation. The 3-16-88 letter from the OCR authorizing me to sue the State is attached at Ex-51a to the Cert. Petition at No. 91-5476.

The respondents purported to rely on Simons v. Bellinger, 643 F. 2d 774 (DC Cir. 1980). However, in Simons, the federal district court determined that the DC Committee, appointed by the DC Court of Appeals to investigate and to prosecute the unauthorized practice of law, "were

reasonable and within their lawful authority." Simons v. Bellinger, No. 75-1164, slip. op. at 3 (D.D.C. 6 Sept. 1977). The Committee did not incur any liability, whether financial or otherwise, to the Simonses absent proof of losses caused by unreasonable investigative activities beyond the scope of their lawful authority. This is the investigative/advocatory rule of Briggs v. Goodwin, 186 US App. D.C. 179, 569 F. 2d 10 (1977), cert. den., 437 US 904 (1978). During the investigative stage of a normally criminal proceeding, when a prosecutor is most likely to encroach upon the guarantees against unreasonable search and seizure, the doctrine of qualified immunity applies, so that a prosecutor's enforcement activities are scrutinized to determine whether he had "probable cause" to carry out the act complained of. If the proceeding matures into an advocatory matter, when much of the activity occurs in court, then he enjoys absolute immunity. However, by that time, a presiding judge is already overseeing the proceeding, so that abuses are less likely, and to the extent they do occur, the presiding judge may sanction the offending party.

In the matter *sub judice*, the entire proceeding deteriorated to an investigative matter, without the customary rights normally incident to legal proceedings. The procedural outrage--a delay of over eight (8) years--rivals the substantive abuses recited in detail and does call for the imposition of oversight from this Court, now that the national mandate has been directed by Congress to eliminate discrimination on the basis of disability across the board.

The respondents alleged, the evidence to the contrary, that I was once afflicted with paranoid schizophrenia, and that I was medically treated, but they do not focus any attention about what the institutional psychiatrists claimed to be the course of the illness attributed to me. (Those psychiatrists,

the first one of whom I *never* met to this day, tried to induce my relatives to believe that I would have to depend upon anti-psychotic drugs for the rest of my life, but when blood samples in 1975, while I was incarcerated, indicated that I was not taking the drugs, they then converted them from solid to liquid rather than to admit that I function quite well without drugs and will likely continue to do so.)

Because the respondent Committee enthusiastically endorsed a patently unlawful area of inquiry, that of medical history, the respondents also set a precedent for inquiring into other patently unlawful areas in similar situations, and may likely envelop other aspiring attorneys into endless quagmires, all in blatant violation of basic constitutional and statutory safeguards. For example, suppose the suspect question inquired about the applicant's gender, and the applicant was asked to check "male" or "female." Gender, a suspect classification like religion and race, is supposed to be left out of the admissions criteria, but as the matter *sub judice* demonstrates, such questions are posed under the guise of inquiring into an applicant's candor, or under the guise of mere statistical significance, so that *all* questions are now legitimate.

The unlitigated case of athlete Maria Jose Martinez Patino, covered in *Women's Sports & Fitness*, March 1991, "When it a Woman NOT a Woman,?" pp. 24-29, shows how even the most innocent question can ruin the career of an elite athlete in the world of competitive sports, where there is a legitimate basis for the question about gender.

"Concerned medical specialists around the world are protesting that the buccal smear is inaccurate, discriminatory and the cause of psychological trauma and personal tragedy in the lives of women athletes. The American College of Physicians and Gynecologists are among the professional medical societies that have called for a ban of the test, and the hospital originally

contracted to do testing at the Calgary Olympics backed out on the grounds that the buccal smear 'lacks any scientific merit.'" p. 26.

The similarity to this case is that an arbitrary and capricious standard generates an artificial problem that has a solution with the adoption of a revised standard as its beginning. The standard for bar admission is absence of moral turpitude. The respondents' efforts to cast my life into one of "moral turpitude" will remind me of the constant oversight necessary to ensure against a rewriting of my personal past, regardless of who are the self-appointed authors.

Like Maria Patino, who knows she is a woman, I know my mental condition, both then and now, and will be taking different measures as time progresses to ensure against recurrences of what the Committee has already done. I look forward to the time when I will be in a financial position to ignore completely the person or the entity who poses a similar question to me, and when my unwillingness to even acknowledge the inquiry or the entity behind it will not entail any loss of a right or privilege for me.

Like gender and medicine, religion is well beyond the scope of criteria lawfully considered in the context of professional licensure. The respondents mechanically repeated foolishly inaccurate statements and even thoughts attributed to my beliefs about religion, and even went to the extreme of alleging "that Mr. Martin thought he had divine powers." Reading another person's mind and using that as a basis to evaluate their religious orientation is a loser's paradise on a par with the examiners of gender and of medicine in the context of the licensed professions. Incidentally, I kept the original prescriptions of the "month's supply of medication, including stelazine and thorazine," but the prescriptions were issued to be refilled for years, not merely months. Of course, they were never filled at all, which is the reason I

still have them. I also still have tape recordings made at that time, inside the asylum, so that any issue of fact could be resolved about why I was being detained. I already transcribed nearly all of those recordings, but the Committee chose to ignore the facts borne out by incontrovertible evidence. Instead, the Committee charged that I "made it difficult to assess what transpired, because he has prevented access to relevant records about his treatment."

The only restriction I placed on access to any medical records about me is that they be *genuine*. Records devised under an applicant's signature, procured through fraud and misrepresentation, could result in liability, I told the administrators at the asylums. Therefore, the Committee could not access the "medical records" in their entirety, because the asylums refused to release the spurious records. Some of the records the Committee then obtained from other bar admission committees, who got access to the file before it became clear to the administrators at the asylums that their misconduct might return to haunt them. The "Discharge Summary" is not a discharge as much as it was a transfer to another asylum, from which I was never discharged to this day. See Cert. Pet. No. 92-5407, filed here on 8-5-92, which is another effort to be discharged.

CONCLUSION

I request that this Petition be granted to consider the merits of applying the ADA and the Civil Rights Act of 1991 to the bar admission process, and to resolve the conflicts among the Circuit Courts of Appeal about whether such discrimination may continue. Moreover, the decision under review conflicts with this Court's rulings governing the Rehabilitation Act.

DATED: August 15, 1992 Respectfully submitted, James L. Martin

James L. Martin; 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957

SUPREME COURT OF THE UNITED STATES

James L. Martin, petitioner : No. _____

v. :

District of Columbia Court of Appeals, et. al., respondents :

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT upon opposing counsel of record for the DC respondents, addressed as follows:

Mary Wilson, Asst. Corporation Counsel
District Bldg., Rm 305
1350 Pennsylvania Ave, N.W.
Wash., DC 20004

and upon counsel of record for the remaining respondent, National Conference of Bar Examiners, at this address:

Orran Lee Brown, Esq.
CHRISTIAN, BARTON, EPPS, BRENT & CHAPPELL
1200 Mutual Bldg.
909 E. Main St.
Richmond, VA 23219-3095

by first-class, postage-prepaid mail this 18th day of August 1992.

By: James L. Martin
James L. Martin, 912 McCabe Ave., Wilm., DE 19802 (302) 652-3957

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 91-7176 **September Term, 1991**

89cv02789

James L. Martin,

Appellant

v.

District of Columbia Court of Appeals, et al.

United States Court of Appeals
For the District of Columbia Circuit
FILED MAY 0 8 1992
CONSTANCE L. DUPRÉ
CLERK

BEFORE: Wald, D.H. Ginsburg and Sentelle, Circuit Judges

O R D E R

Upon consideration of the motion to expedite appeal; the motion for summary reversal, the opposition thereto and the reply; the motions for summary affirmance and the opposition thereto, it is

ORDERED that the motions for summary affirmance be granted substantially for the reasons stated by the district court in its order filed October 4, 1991. The merits of the parties' positions are so clear as to justify summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980). It is

FURTHER ORDERED that the motion for summary reversal be denied. It is

FURTHER ORDERED that the motion to expedite appeal be dismissed as moot.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 91-7176 September Term, 19 91

CV 89-02789

James L. Martin,

Appellant

v.

District of Columbia Court of Appeals, et al.

BEFORE: Mikva, Chief Judge; Wald, Edwards, Ruth B. Ginsburg, Silberman, Buckley, Williams, D. H. Ginsburg, Sentelle, Henderson, and Randolph, Circuit Judges

O R D E R

Appellant's Suggestion For Rehearing En Banc has been circulated to the full Court. No member of the Court requested the taking of a vote thereon. Upon consideration of the foregoing it is

ORDERED, by the Court en banc, that the suggestion is denied.

Per Curiam
FOR THE COURT:
CONSTANCE L. DUPRE, CLERK

BY: Robert A Bonner

Robert A. Bonner
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES L. MARTIN,

Plaintiff,

v.

DISTRICT OF COLUMBIA COURT OF APPEALS, et al.,

Defendants.

Civil Action No.89-2789

ORDER

Upon consideration of defendants' motions to dismiss, and opposition thereto, it appearing to the Court that it does not have subject matter jurisdiction over the case in accordance with District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), and it further appearing that plaintiff has filed similar suits in federal court, which have also been dismissed for lack of subject matter jurisdiction, see James L. Martin v. Court of Appeals of Maryland et al., No.88-1749 (4th Cir., March 7, 1989); James L. Martin v. Virginia Board of Board Examiners et al., No.88-1752 (4th Cir., March 7, 1989), it is, this 4th day of October, 1991,

#14(1')

ORDERED, that defendants' motions to dismiss for lack of subject matter jurisdiction are granted pursuant to Fed.R.Civ.P. 12(b)(1); and it is

FURTHER ORDERED, that the complaint is dismissed with prejudice.

Thomas Penfield Jackson
U.S. District Judge

QUESTION PRESENTED

Whether the court of appeals properly affirmed the district court's ruling that it lacked subject matter jurisdiction over petitioner James L. Martin's suit challenging the District of Columbia Court of Appeals' determination that he should not be issued a license to practice law.

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TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-5584

JAMES L. MARTIN,

Petitioner,

v.

DISTRICT OF COLUMBIA COURT OF APPEALS, HON. JOHN A. TERRY, HON. JAMES A. BELSON, HON. JUDITH W. ROGERS, DISTRICT OF COLUMBIA COURT OF APPEALS ADMISSIONS COMMITTEE, HON. CATHERINE KELLY, JAMES F. WALKER, JOHN RISHER, CAROL G. FREEMAN, ROBERT ELLIOTT, PATRICIA WYNN, and NATIONAL CONFERENCE OF BAR EXAMINERS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE NATIONAL CONFERENCE OF BAR EXAMINERS IN OPPOSITION

STATEMENT

Petitioner James L. Martin ("Martin") filed this suit on or about October 11, 1989, in the District Court

for the District of Columbia against the National Conference of Bar Examiners ("National Conference") as well as the District of Columbia Court of Appeals, the District of Columbia Court of Appeals Admissions Committee, and various individual judges and members of the Admissions Committee (collectively referred to as the District of Columbia respondents). Martin asserted eight claims arising out of the court of appeals' determination that Martin did not demonstrate his good moral character and fitness to practice law.

The National Conference moved to dismiss all eight of Martin's claims against it on the ground that the court lacked subject matter jurisdiction over the suit, as well as on several other grounds. The National Conference moved in the alternative for judgment on the pleadings or for summary judgment.

On October 11, 1991, the district court dismissed the entire case for lack of subject matter jurisdiction. Martin appealed to the United States Court of Appeals for the District of Columbia Circuit, requesting summary reversal. Martin argued that since the district court's order was entered, Congress had passed the Civil Rights Act of 1991, P.L. 102-166, which he claimed provided him a cause of action for compensatory and punitive damages under new 42 U.S.C. § 1981(d) for intentional employment discrimination in violation of the Americans with Disabilities Act, 42 U.S.C. § 12117.

The National Conference and the District of Columbia respondents moved for summary affirmance. On May 8, 1992, the Court of Appeals for the District of Columbia Circuit issued a summary affirmance of the district court's order. Martin then petitioned this Court for certiorari.

ARGUMENT

I. THE COURT OF APPEALS' AFFIRMANCE OF THE DISTRICT COURT'S RULING THAT IT HAD NO SUBJECT MATTER JURISDICTION OVER MARTIN'S CLAIMS WAS MANDATED BY THIS COURT'S DECISION IN *DISTRICT OF COLUMBIA COURT OF APPEALS v. FELDMAN*.

In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), this Court established that federal district courts do not have jurisdiction to review state court decisions denying an individual applicant's admission to the bar. This rule extends to all constitutional and statutory claims which are "inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state's bar." *Id.* at 482-83 n.16. Martin's injection into this case of claims under the Civil Rights Act of 1991 and the Americans with Disabilities Act does nothing to alter the rule. Regardless of the source of the alleged causes of action, the district court has no jurisdiction to review denials of applications for bar admission.

II. THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL BAR MARTIN'S CLAIMS AGAINST THE NATIONAL CONFERENCE.

Martin's claims against the National Conference in this action are identical to those Martin made in another case filed in federal district court in Richmond, Virginia. Both sets of claims stem from the character survey which the National Conference prepared on behalf of various state bar examining authorities. As documented in the record in this case, that case was dismissed by Judge Merhige, United States District Judge for the Eastern District of Virginia, on August 16, 1988. The United States Court of Appeals for the Fourth Circuit affirmed that dismissal on March 9, 1989, and this Court denied certiorari on June 19, 1989. Res Judicata and collateral estoppel bar

Martin from relitigating claims or issues which already have been or could have been, raised in that earlier litigation. *See Allen v. McCurry*, 449 U.S. 90 (1980).

CONCLUSION

Martin has failed to articulate any basis for issuance of certiorari in this case. The court of appeals summary affirmance of the district court's order was proper. Martin's claims must fail either because the district court had no jurisdiction over them, or they are barred by res judicata and collateral estoppel. The petition for writ of certiorari should be denied.

Respectfully submitted,

ORRAN LEE BROWN
CHRISTIAN, BARTON, EPPS,
BRENT & CHAPPEL
1200 Mutual Building
909 East Main Street
Richmond, Virginia 23219
(804) 644-7851
Counsel for Respondent
National Conference of
Bar Examiners

92-5584

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon Plaintiff, James L. Martin, pro se, 912 McCabe Avenue, Wilmington, Delaware 19802, and upon Mary Wilson, Esquire, Assistant Corporation Counsel, Office of the Corporation Counsel, Room 305, The District Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C., 20004, by first-class mail, postage prepaid, on this 18th day of September, 1992.

Orran Lee Brown

SUPREME COURT OF THE UNITED STATES

92–5584 JAMES L. MARTIN
v.
DISTRICT OF COLUMBIA COURT OF APPEALS ET AL.

92–5618 JAMES L. MARTIN
v.
CHRISTINE McDERMOTT ET AL.

ON MOTIONS OF PETITIONER FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Nos. 92-5584 AND 92-5618. Decided November 2, 1992

PER CURIAM.

Pro se petitioner James L. Martin requests leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request pursuant to our Rule 39.8. Martin is allowed until November 23, 1992, within which to pay the docketing fees required by Rule 38 and to submit his petitions in compliance with this Court's Rule 33. We also direct the Clerk not to accept any further petitions for certiorari from Martin in noncriminal matters unless he pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule 33.

Martin is a notorious abuser of this Court's certiorari process. We first invoked Rule 39.8 to deny Martin *in forma pauperis* status last November. See *Zatko* v. *California*, 502 U. S. ___ (1991) *(per curiam)*. At that time, we noted that Martin had filed 45 petitions in the past 10 years, and 15 in the preceding 2 years alone. Although Martin was granted *in forma pauperis* status to file these petitions, all of these petitions were denied without recorded dissent. In invoking Rule 39.8, we observed that Martin is "unique—not merely among those

who seek to file *in forma pauperis*, but also among those who have paid the required filing fees—because [he has] repeatedly made totally frivolous demands on the Court's limited resources." *Id.*, at ___. Unfortunately, Martin has continued in his accustomed ways.

Since we first denied him *in forma pauperis* status last year, he has filed nine petitions for certiorari with this Court. We denied Martin leave to proceed *in forma pauperis* under Rule 39.8 of this Court with respect to four of these petitions,[1] and denied the remaining five petitions outright.[2] Two additional petitions for certiorari are before us today, bringing the total number of petitions Martin has filed in the past year to 11. With the arguable exception of one of these petitions, see *Martin* v. *Knox*, 502 U. S. ___ (1991) (STEVENS, J., joined by BLACKMUN, J., concurring in denial of certiorari), all of Martin's filings, including those before us today, have been demonstrably frivolous.

In *Zatko*, we warned that "[f]uture similar filings from [Martin] will merit additional measures." 502 U. S., at ___. As we have recognized, "[e]very paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice." *In re McDonald*, 489 U. S. 180, 184 (1989) *(per curiam)*. Consideration of Martin's repetitious and frivolous petitions for certiorari does not promote this end.

We have entered orders similar to the present one on two previous occasions to prevent *pro se* petitioners from

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[1] *Martin* v. *Smith*, 506 U. S. ___ (1992); *Martin* v. *Delaware*, 506 U. S. ___ (1992); *Martin* v. *Sparks*, 506 U. S. ___ (1992); *Martin* v. *Delaware*, 505 U. S. ___ (1991).

[2] *Martin* v. *Delaware Law School of Widener University*, 506 U. S. ___ (1992); *Martin* v. *Delaware*, 506 U. S. ___ (1992); *Martin* v. *Knox*, 502 U. S. ___ (1991); *Martin* v. *Knox*, 502 U. S. ___ (1991); *Martin* v. *Medical Center of Delaware*, 502 U. S. ___ (1991).

filing repetitious and frivolous requests for extraordinary relief. See *In re Sindram*, 498 U. S. 177 (1991) *(per curiam)*; *In re McDonald*, *supra*. Although this case does not involve abuse of an extraordinary writ, but rather the writ of certiorari, Martin's pattern of abuse has had a similarly deleterious effect on this Court's "fair allocation of judicial resources." See *In re Sindram*, *supra*, at 180. As a result, the same concerns which led us to enter the orders barring prospective filings in *Sindram* and *McDonald* require such action here.

We regret the necessity of taking this step, but Martin's refusal to heed our earlier warning leaves us no choice. His abuse of the writ of certiorari has been in noncriminal cases, and so we limit our sanction accordingly. The order will therefore not prevent Martin from petitioning to challenge criminal sanctions which might be imposed on him. But it will free this Court's limited resources to consider the claims of those petitioners who have not abused our certiorari process.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

JAMES L. MARTIN

92–5584 *v.*

DISTRICT OF COLUMBIA COURT OF APPEALS ET AL.

JAMES L. MARTIN

92–5618 *v.*

CHRISTINE McDERMOTT ET AL.

ON MOTIONS OF PETITIONER FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Nos. 92–5584 AND 92–5618. Decided November 2, 1992

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

In my opinion the judicial resources of the Court could be used more effectively by simply denying Martin's petitions than by drafting, entering, and policing the order the Court enters today. The theoretical administrative benefit the Court may derive from an order of this kind is far outweighed by the shadow it casts on the great tradition of open access that characterized the Court's history prior to its unprecedented decisions in *In re McDonald*, 489 U. S. 180 (1989) *(per curiam)* and *In re Sindram*, 498 U. S. 177 (1991) *(per curiam)*. I continue to adhere to the views expressed in the dissenting opinions filed in those cases, and in the dissenting opinion I filed in *Zatko* v. *California*, 502 U. S. ——, —— (1991) *(per curiam)*. See also *Talamini* v. *Allstate Insurance Co.*, 470 U. S. 1067 (1985), app. dism'd (STEVENS, J., concurring).